

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Second Amended )  
Petition to Revoke Probation Against: )**

**THOMAS S. POWERS, M.D. )**

**Case No. 800-2018-046243**

**Physician's and Surgeon's )  
Certificate No. G15640 )**

**Respondent )  
\_\_\_\_\_ )**

**DECISION**

**The attached Stipulated Surrender of License and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.**

**This Decision shall become effective at 5:00 p.m. on June 18, 2019.**

**IT IS SO ORDERED June 11, 2019.**

**MEDICAL BOARD OF CALIFORNIA**

By:   
**Kimberly Kirchmeyer  
Executive Director**

1 XAVIER BECERRA  
Attorney General of California  
2 ALEXANDRA M. ALVAREZ  
Supervising Deputy Attorney General  
3 CHRISTINE A. RHEE  
Deputy Attorney General  
4 State Bar No. 295656  
600 West Broadway, Suite 1800  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 738-9455  
7 Facsimile: (619) 645-2061

8 *Attorneys for Petitioner*

9  
10 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
12 **STATE OF CALIFORNIA**

13 In the Matter of the Second Amended Petition  
to Revoke Probation Against:

14 **THOMAS S. POWERS, M.D.**  
15 **2221 E. 4th Street, C147**  
16 **Santa Ana, CA 92705-3804**

17 **Physician's and Surgeon's Certificate**  
**No. G15640,**

18 Respondent.

Case No. 800-2018-046243

OAH No. 2018110856

**STIPULATED SURRENDER OF  
LICENSE AND DISCIPLINARY ORDER**

19  
20  
21 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
22 entitled proceedings that the following matters are true:

23 **PARTIES**

24 1. Kimberly Kirchmeyer (Petitioner) is the Executive Director of the Medical Board of  
25 California (Board). She brought this action solely in her official capacity and is represented in  
26 this matter by Xavier Becerra, Attorney General of the State of California, by Christine A. Rhee,  
27 Deputy Attorney General.

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2.. Thomas S. Powers, M.D. (Respondent) is represented in this proceeding by attorney John D. Martin, Esq., whose address is: 319 Harvard Avenue, Claremont, CA 91711.

3. On or about October 18, 1968, the Board issued Physician's and Surgeon's Certificate No. G15640 to Thomas S. Powers, M.D. (Respondent). Physician's and Surgeon's Certificate No. G15640 was in full force and effect at all times relevant to the charges brought in Second Amended Petition to Revoke Probation No. 800-2018-046243 and will expire on August 31, 2019, unless renewed.

## JURISDICTION

4. Second Amended Petition to Revoke Probation No. 800-2018-046243 was filed before the Board, and is currently pending against Respondent. Second Amended Petition to Revoke Probation No. 800-2018-046243 and all other statutorily required documents were properly served on Respondent on May 20, 2019. Respondent timely filed his Notice of Defense. A true and correct copy of Second Amended Petition to Revoke Probation No. 800-2018-046243 is attached as Exhibit A and is incorporated by reference herein.

## ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Second Amended Petition to Revoke Probation No. 800-2018-046243. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Second Amended Petition to Revoke Probation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Having had the benefit of counsel, Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

1 CULPABILITY

2 8. Respondent admits the truth of each and every charge and allegation in Second  
3 Amended Petition to Revoke Probation No. 800-2018-046243, agrees that cause exists for  
4 discipline, and hereby surrenders his Physician's and Surgeon's Certificate No. G15640 for the  
5 Board's formal acceptance.

6 9. Respondent understands that by signing this stipulation he enables the Board to issue  
7 an order accepting the surrender of his Physician's and Surgeon's Certificate without further  
8 process.

9 CONTINGENCY

10 10. Pursuant to Business and Professions Code section 2224, subdivision (b), the  
11 Executive Director of the Board has been delegated the authority to adopt or reject a stipulation  
12 for surrender of a Physician's and Surgeon's Certificate.

13 11. The parties agree that this Stipulated Surrender of License and Disciplinary Order  
14 shall be null and void and not binding upon the parties unless approved by the Executive Director  
15 on behalf of the Board. Respondent fully understands and agrees that in deciding whether or not  
16 to approve and adopt this Stipulated Surrender of License and Disciplinary Order, the Executive  
17 Director and/or the Board may receive oral and written communications from its staff and/or the  
18 Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the  
19 Executive Director, the Board, any member thereof, and/or any other person from future  
20 participation in this or any other matter affecting or involving Respondent. In the event that the  
21 Executive Director on behalf of the Board does not, in her discretion, approve and adopt this  
22 Stipulated Surrender of License and Disciplinary Order, with the exception of this paragraph, it  
23 shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied  
24 upon or introduced in any disciplinary action by either party hereto. Respondent further agrees  
25 that should this Stipulated Surrender of License and Disciplinary Order be rejected for any reason  
26 by the Executive Director on behalf of the Board, Respondent will assert no claim that the Board,  
27 or any member thereof, was prejudiced by its/his/her review, discussion, and/or consideration of

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1 this Stipulated Surrender of License and Disciplinary Order or of any matter or matters related  
2 hereto.

3 12. The Executive Director shall have a reasonable period of time in which to consider  
4 and act on this stipulation after receiving it. By signing this stipulation, Respondent fully  
5 understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation  
6 prior to the time the Executive Director considers and acts upon it.

7 **ADDITIONAL PROVISIONS**

8 13. This Stipulated Surrender of License and Disciplinary Order is intended by the parties  
9 herein to be an integrated writing representing the complete, final, and exclusive embodiment of  
10 the agreements of the parties in the above-entitled matter.

11 14. The parties agree that copies of this Stipulated Surrender of License and Disciplinary  
12 Order, including copies of the signatures of the parties, may be used in lieu of original documents  
13 and signatures and, further, that such copies shall have the same force and effect as originals.

14 15. In consideration of the foregoing admissions and stipulations, the parties agree that  
15 the Board may, without further notice or formal proceeding, issue and enter the following  
16 Disciplinary Order:

17 **DISCIPLINARY ORDER**

18 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G15640, issued  
19 to Respondent Thomas S. Powers, M.D., is surrendered and accepted by the Board.

20 1. The surrender of Respondent's Physician's and Surgeon's Certificate No. G15640  
21 and the acceptance of the surrendered license by the Board shall constitute the imposition of  
22 discipline against Respondent. This stipulation constitutes a record of the discipline and shall  
23 become a part of Respondent's license history with the Board.

24 2. Respondent shall lose all rights and privileges as a Physician and Surgeon in  
25 California as of the effective date of the Board's Decision and Order.

26 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was  
27 issued, his wall certificate on or before the effective date of the Decision and Order.

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4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in Second Amended Petition to Revoke Probation No. 800-2018-046243 shall be deemed to be true, correct, and admitted by Respondent when the Board determines whether to grant or deny the petition.

5. Respondent shall pay the Board the outstanding fines for Citation Order No. 8002017035359 and Citation Order No. 8002018045408 in the amount of \$350.00 and \$700.00, respectively, prior to petitioning for reinstatement of his license.

6. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Second Amended Petition to Revoke Probation No. 800-2018-046243 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

#### ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Disciplinary Order and have fully discussed it with my attorney John D. Martin, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Surrender of License and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 5/14/19

Thomas S. Powers, M.D.  
THOMAS S. POWERS, M.D.  
Respondent

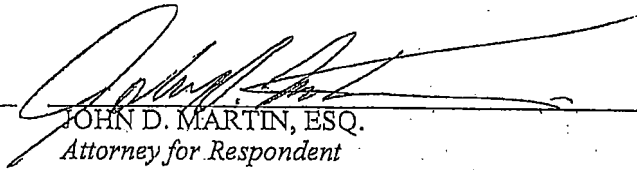
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1 I have read and fully discussed with Respondent Thomas S. Powers, M.D., the terms and  
2 conditions and other matters contained in this Stipulated Surrender of License and Disciplinary  
3 Order. I approve its form and content.

4  
5 DATED: 5/20/2019

  
JOHN D. MARTIN, ESQ.  
*Attorney for Respondent*

7  
8 ENDORSEMENT

9 The foregoing Stipulated Surrender of License and Disciplinary Order is hereby  
10 respectfully submitted for consideration by the Medical Board of California of the Department of  
11 Consumer Affairs.

12 Dated:

Respectfully submitted,

13 XAVIER BECERRA  
14 Attorney General of California  
ALEXANDRA M. ALVAREZ  
Supervising Deputy Attorney General

15  
16  
17 CHRISTINE A. RHEE  
Deputy Attorney General  
18 *Attorneys for Petitioner*  
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28

1 I have read and fully discussed with Respondent Thomas S. Powers, M.D., the terms and  
2 conditions and other matters contained in this Stipulated Surrender of License and Disciplinary  
3 Order. I approve its form and content.

4  
5 DATED: \_\_\_\_\_

JOHN D. MARTIN, ESQ.  
*Attorney for Respondent*

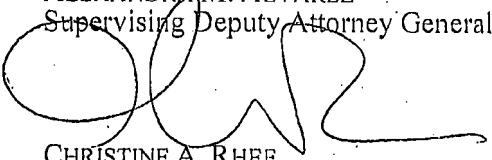
7  
8 **ENDORSEMENT**

9 The foregoing Stipulated Surrender of License and Disciplinary Order is hereby  
10 respectfully submitted for consideration by the Medical Board of California of the Department of  
11 Consumer Affairs.

12 Dated: 5/21/19

Respectfully submitted,

13 XAVIER BECERRA  
14 Attorney General of California  
ALEXANDRA M. ALVAREZ  
15 Supervising Deputy Attorney General

16   
17 CHRISTINE A. RHEE  
18 Deputy Attorney General  
19 *Attorneys for Petitioner*



**Exhibit A**

**Second Amended Petition to Revoke Probation No. 800-2018-046243**

1 XAVIER BECERRA  
Attorney General of California  
2 ALEXANDRA M. ALVAREZ  
Supervising Deputy Attorney General  
3 CHRISTINE A. RHEE  
Deputy Attorney General  
4 State Bar No. 295656  
600 West Broadway, Suite 1800  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 738-9455  
7 Facsimile: (619) 645-2061

8 *Attorneys for Petitioner*

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO MAY 20 2019  
BY *[Signature]* ANALYST

10  
11 BEFORE THE  
12 MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
13 STATE OF CALIFORNIA

14 In the Matter of the Second Amended Petition  
to Revoke Probation Against:

Case No. 800-2018-046243

15 THOMAS S. POWERS, M.D.  
2221 E. 4th St., Ste. C147  
16 Santa Ana, CA 92705-3804

OAH No. 2018110856

17 SECOND AMENDED PETITION TO  
18 REVOKE PROBATION

19 Physician's and Surgeon's Certificate  
No. G15640,

Respondent.

20  
21 Petitioner alleges:

22 PARTIES

23 1. Kimberly Kirchmeyer (Petitioner) brings this Second Amended Petition to Revoke  
24 Probation solely in her official capacity as the Executive Director of the Medical Board of  
25 California, Department of Consumer Affairs.

26 2. On or about October 18, 1968, the Medical Board of California issued Physician's  
27 and Surgeon's Certificate No. G15640 to Thomas S. Powers, M.D. (Respondent). Physician's  
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1 and Surgeon's Certificate No. G15640 was in effect at all times relevant to the charges brought  
2 herein, and will expire on August 31, 2019, unless renewed.

3 **DISCIPLINARY HISTORY**

4 3. On or about May 27, 2009, the Medical Board of California issued a Public Letter of  
5 Reprimand for Case No. 06-2007-184451, disciplining Respondent for failing to maintain  
6 adequate and accurate records for the care and treatment of three (3) patients. Respondent was  
7 ordered to successfully complete a medical record keeping course.

8 4. In a disciplinary action entitled, "In the Matter of Accusation Against: Thomas S.  
9 Powers, M.D.," Case No. 04-2013-235019, the Medical Board of California, issued a decision,  
10 effective July 14, 2017, in which Respondent's Physician's and Surgeon's Certificate No.  
11 G15640 was revoked. However, the revocation was stayed and Respondent's Physician's and  
12 Surgeon's Certificate No. G15640 was placed on probation for a period of three (3) years with  
13 certain terms and conditions. A copy of that decision is attached as Exhibit A, and is incorporated  
14 by reference as if fully set forth herein.

15 5. On or about August 18, 2017, the Medical Board of California issued and served a  
16 Cease Practice Order against Respondent, immediately prohibiting him from engaging in the  
17 practice of medicine pending a final decision on a petition to revoke probation. That Cease  
18 Practice Order was based on Respondent's failure to comply with Condition No. 4, Biological  
19 Fluid Testing, of his probation in Case No. 04-2013-235019.

20 6. In a disciplinary action entitled, "In the Matter of the Petition to Revoke Probation  
21 Against: Thomas S. Powers, M.D." Case No. 800-2017-035603, the Medical Board of California  
22 issued a decision, effective May 2, 2018, in which Respondent's Physician's and Surgeon's  
23 Certificate No. G15640 was revoked. However, the revocation was stayed and Respondent's  
24 Physician's and Surgeon's Certificate No. G15640 was placed on one additional year of probation  
25 with certain terms and conditions, which runs consecutive to the term of probation previously  
26 ordered in the Decision and Order in Case No. 04-2013-235019. A copy of that decision is  
27 attached as Exhibit A, and is incorporated by reference as if fully set forth herein.

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**JURISDICTION**

7. This Second Amended Petition to Revoke Probation, which supersedes the First Amended Petition to Revoke Probation filed on April 4, 2019, is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws and the Board's Decisions and Orders in Case No. 04-2013-235019 and Case No. 800-2017-035603. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

8. Section 2227 of the Code states, in pertinent part:

“(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

“(1) Have his or her license revoked upon order of the board.

“(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

“(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

“(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

“(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

“...”

9. At all times after the effective dates of Respondent's probation in Case No. 04-2013-235019 and Case No. 800-2017-035603, Condition No. 19 and Condition No. 23, respectively, of Respondent's probation provided the following:

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1           “VIOLATION OF PROBATION. Failure to fully comply with any term or  
2           condition of probation is a violation of probation. If Respondent violates probation in  
3           any respect, the Board, after giving Respondent notice and the opportunity to be heard,  
4           may revoke probation and carry out the disciplinary order that was stayed. If an  
5           Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed  
6           against Respondent during probation, the Board shall have continuing jurisdiction until  
7           the matter is final, and the period of probation shall be extended until the matter is  
8           final.”

9                           **FIRST CAUSE TO REVOKE PROBATION**  
10                          **(Failure to Comply with Required Biological Fluid Testing)**

11           10. At all times after the effective date of Respondent’s probation in Case No. 800-2017-  
12           035603, Condition No. 14 of Respondent’s probation provided:

13                          “14. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit  
14                          to biological fluid testing, at Respondent’s expense, upon request of the Board or its  
15                          designee. ‘Biological fluid testing’ may include, but is not limited to, urine, blood,  
16                          breathalyzer, hair follicle testing, or similar drug screening approved by the Board or  
17                          its designee. Respondent shall make daily contact with the Board or its designee to  
18                          determine whether biological fluid testing is required. Respondent shall be tested on  
19                          the date of the notification as directed by the Board or its designee. The Board may  
20                          order a Respondent to undergo a biological fluid test on any day, at any time, including  
21                          weekends and holidays. Except when testing on a specific date as ordered by the  
22                          Board or its designee, the scheduling of biological fluid testing shall be done on a  
23                          random basis. The cost of biological fluid testing shall be borne by the Respondent.

24                          “During the first year of probation, Respondent shall be subject to 52 to 104  
25                          random tests. During the second year of probation and for the duration of the  
26                          probationary term, up to five (5) years, Respondent shall be subject to 36 to 104  
27                          random tests per year. Only if there has been no positive biological fluid tests in the  
28                          previous five (5) consecutive years of probation, may testing be reduced to one (1) time

1 per month. Nothing precludes the Board from increasing the number of random tests  
2 to the first-year level of frequency for any reason.

3 "Prior to practicing medicine, Respondent shall contract with a laboratory or  
4 service, approved in advance by the Board or its designee, that will conduct random,  
5 unannounced, observed, biological fluid testing and meets all of the following  
6 standards:

7 "(a) Its specimen collectors are either certified by the Drug and Alcohol Testing  
8 Industry Association or have completed the training required to serve as a collector for  
9 the United States Department of Transportation.

10 "(b) Its specimen collectors conform to the current United States Department of  
11 Transportation Specimen Collection Guidelines.

12 "(c) Its testing locations comply with the Urine Specimen Collection Guidelines  
13 published by the United States Department of Transportation without regard to the type  
14 of test administered.

15 "(d) Its specimen collectors observe the collection of testing specimens.

16 "(e) Its laboratories are certified and accredited by the United States Department  
17 of Health and Human Services.

18 "(f) Its testing locations shall submit a specimen to a laboratory within one (1)  
19 business day of receipt and all specimens collected shall be handled pursuant to chain  
20 of custody procedures. The laboratory shall process and analyze the specimens and  
21 provide legally defensible test results to the Board within seven (7) business days of  
22 receipt of the specimen. The Board will be notified of non-negative results within one  
23 (1) business day and will be notified of negative test results within seven (7) business  
24 days.

25 "(g) Its testing locations possess all the materials, equipment, and technical  
26 expertise necessary in order to test Respondent on any day of the week.

27 "(h) Its testing locations are able to scientifically test for urine, blood, and hair  
28 specimens for the detection of alcohol and illegal and controlled substances.

1           “(i) It maintains testing sites located throughout California.

2           “(j) It maintains an automated 24-hour toll-free telephone system and/or a secure  
3 on-line computer database that allows the Respondent to check in daily for testing.

4           “(k) It maintains a secure, HIPAA-compliant website or computer system that  
5 allows staff access to drug test results and compliance reporting information that is  
6 available 24 hours a day.

7           “(l) It employs or contracts with toxicologists that are licensed physicians and  
8 have knowledge of substance abuse disorders and the appropriate medical training to  
9 interpret and evaluate laboratory biological fluid test results, medical histories, and any  
10 other information relevant to biomedical information.

11           “(m) It will not consider a toxicology screen to be negative if a positive result is  
12 obtained while practicing, even if the Respondent holds a valid prescription for the  
13 substance.

14           “Prior to changing testing locations for any reason, including during vacation or  
15 other travel, alternative testing locations must be approved by the Board and meet the  
16 requirements above.

17           “The contract shall require that the laboratory directly notify the Board or its  
18 designee of non-negative results within one (1) business day and negative test results  
19 within seven (7) business days of the results becoming available. Respondent shall  
20 maintain this laboratory or service contract during the period of probation.

21           “A certified copy of any laboratory test result may be received in evidence in any  
22 proceedings between the Board and Respondent.

23           “If a biological fluid test result indicates Respondent has used, consumed,  
24 ingested, or administered to himself a prohibited substance, the Board shall order  
25 Respondent to cease practice and instruct Respondent to leave any place of work where  
26 Respondent is practicing medicine or providing medical services. The Board shall  
27 immediately notify all of Respondent’s employers, supervisors and work monitors, if  
28

///

1 any, that Respondent may not practice medicine or provide medical services while the  
2 cease-practice order is in effect.

3 "A biological fluid test will not be considered negative if a positive result is  
4 obtained while practicing, even if the practitioner holds a valid prescription for the  
5 substance. If no prohibited substance use exists, the Board shall lift the cease-practice  
6 order within one (1) business day.

7 "After the issuance of a cease-practice order, the Board shall determine whether  
8 the positive biological fluid test is in fact evidence of prohibited substance use by  
9 consulting with the specimen collector and the laboratory, communicating with the  
10 licensee, his treating physician(s), other health care provider, or group facilitator, as  
11 applicable.

12 "For purposes of this condition, the terms 'biological fluid testing' and 'testing'  
13 mean the acquisition and chemical analysis of a Respondent's urine, blood, breath, or  
14 hair.

15 "For purposes of this condition, the term 'prohibited substance' means an illegal  
16 drug, a lawful drug not prescribed, recommended or ordered by an appropriately  
17 licensed health care provider for use by Respondent and approved by the Board,  
18 alcohol, or any other substance the Respondent has been instructed by the Board not to  
19 use, consume, ingest, or administer to himself.

20 "If the Board confirms that a positive biological fluid test is evidence of use of a  
21 prohibited substance, Respondent has committed a major violation, as defined in  
22 section 1361.52(a), and the Board shall impose any or all of the consequences set forth  
23 in section 1361.52(b), in addition to any other terms or conditions the Board  
24 determines are necessary for public protection or to enhance Respondent's  
25 rehabilitation."

26 11. Respondent's probation is subject to revocation because he failed to comply with  
27 Probation Condition No. 14, referenced above. The facts and circumstances regarding this  
28 violation are as follows:



1           12. Pursuant to Condition No. 14 of Respondent's probation in Case No. 800-2017-  
2 035603, and the agreement entered into between Respondent and FirstSource Solutions,  
3 Respondent was required to submit to random biological fluid tests administered by FirstSource  
4 Solutions. In order to ascertain whether he had been selected to be tested on any particular day,  
5 Respondent was required to make daily contact with FirstSource Solutions, through the  
6 FirstSource Solutions website, the FirstSource Solutions mobile app, or by telephone to the  
7 FirstSource Solutions Interactive Voice Response system. If selected for testing, Respondent was  
8 then required to report to a FirstSource Solutions-approved testing site and be tested that same  
9 day.

10           13. On or about April 18, 2018, Respondent met with his probation inspector and went  
11 over the Decision and Order in Case No. 800-2017-035603. Respondent acknowledged that he  
12 received a copy of the Decision and Order in Case No. 800-2017-035603 and that he understood  
13 what was required of him while he was on probation.

14           14. On or about May 10, 2018, the Board mailed Respondent a letter advising him that he  
15 needed to enroll with FirstSource Solutions for his biological fluid testing.

16           15. On or about May 17, 2018, Respondent was scheduled to check in with FirstSource  
17 Solutions. Respondent failed to check in from on or about May 17, 2018 through May 27, 2018.

18           16. On or about May 23, 2018, FirstSource Solutions notified the Board that Respondent  
19 was having difficulty accessing the system through FirstSource Solution's website and mobile  
20 application from on or about May 17, 2018 through May 22, 2018. FirstSource Solutions verified  
21 that there were no issues with Respondent's passcode.

22           17. Respondent failed to check in with FirstSource Solutions on or about the following  
23 days:

- 24           a. June 14, 2018;
- 25           b. June 15, 2018;
- 26           c. June 17, 2018;
- 27           d. June 24, 2018;
- 28           e. June 28, 2018;

- f. September 29, 2018;
- g. October 16, 2018;
- h. November 1, 2018;
- i. December 2, 2018;
- j. December 12, 2018;
- k. December 20, 2018;
- l. December 23, 2018;
- m. December 26, 2018;
- n. January 22, 2019;
- o. January 28, 2019;
- p. March 12, 2019;
- q. March 20, 2019; and
- r. April 30, 2019.

18. Respondent failed to check in with FirstSource Solutions and failed to report to a FirstSource-approved testing site to provide a biological fluid sample, on or about the following days:

- a. June 16, 2018;
- b. June 26, 2018;
- c. July 5, 2018; and
- d. March 24, 2019.

**SECOND CAUSE TO REVOKE PROBATION**  
**(Failure Notify the Board of Respondent's Return to Practice)**

19. At all times and after the effective date of Respondent's probation in Case No. 800-2017-035603 and Case No. 04-2013-235019, Condition No. 21 of Respondent's probation provided:

"21. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return

1 to practice. Non-practice is defined as any period of time Respondent is not practicing  
2 medicine as defined in Business and Professions Code sections 2051 and 2052 for at  
3 least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or  
4 other activity as approved by the Board. If Respondent resides in California and is  
5 considered to be in non-practice, Respondent shall comply with all terms and  
6 conditions of probation. All time spent in an intensive training program which has  
7 been approved by the Board or its designee shall not be considered non-practice and  
8 does not relieve Respondent from complying with all the terms and conditions of  
9 probation. Practicing medicine in another state of the United States or Federal  
10 jurisdiction while on probation with the medical licensing authority of that state or  
11 jurisdiction shall not be considered non-practice. A Board-ordered suspension of  
12 practice shall not be considered as a period of non-practice.

13 "In the event Respondent's period of non-practice while on probation exceeds 18  
14 calendar months, Respondent shall successfully complete the Federation of State  
15 Medical Boards' Special Purpose Examination, or, at the Board's discretion, a clinical  
16 competence assessment program that meets the criteria of Condition 18 of the current  
17 version of the Board's "Manual of Model Disciplinary Orders and Disciplinary  
18 Guidelines" prior to resuming the practice of medicine.

19 "Respondent's period of non-practice while on probation shall not exceed two (2)  
20 years.

21 "Periods of non-practice will not apply to the reduction of the probationary term.

22 "Periods of non-practice for a Respondent residing outside of California will  
23 relieve Respondent of the responsibility to comply with the probationary terms and  
24 conditions with the exception of this condition and the following terms and conditions  
25 of probation: Obey All Laws; General Probation Requirements; Quarterly  
26 Declarations; Abstain from the Use of Controlled Substances; and Biological Fluid  
27 Testing."

28 ///

1       20. Respondent's probation is subject to revocation because he failed to comply with  
2 Probation Condition No. 21, referenced above. The facts and circumstances regarding this  
3 violation are as follows:

4       21. On or about January 30, 2019, a probation monitor for the Board met with  
5 Respondent for his first quarterly meeting for 2019. Respondent told the probation monitor that  
6 he was in a period of non-practice.

7       22. On or about April 24, 2019, the same probation monitor met with Respondent for his  
8 second quarterly meeting for 2019. Respondent informed the Board probation monitor that he  
9 started working with another physician, K.L. M.D., in Santa Ana, in or around January or  
10 February 2019. Respondent failed to inform the Board that he had resumed practice within 15  
11 calendar days of Respondent's return to practice.

12                               **THIRD CAUSE TO REVOKE PROBATION**  
13                               **(Failure to Obey All Laws)**

14       23. At all times after the effective dates of Respondent's probation in Case No. 800-2017-  
15 035603 and Case No. 04-2013-235019, Condition No. 13 of Respondent's probation provided:

16               "13. OBEY ALL LAWS. Respondent shall obey all federal, state and local  
17 laws, all rules governing the practice of medicine in California and remain in full  
18 compliance with any court ordered criminal probation, payments, and other orders."

19       24. Respondent's probation is subject to revocation because he failed to comply with  
20 Probation Condition No. 13, referenced above. The facts and circumstances regarding these  
21 violations are as follows:

22       25. On or about August 10, 2017, the Board issued Citation Order No. 8002017035359  
23 for failing to check in for biological fluid testing on approximately four (4) occasions on or about  
24 July 25, 2017, July 28, 2017, July 29, 2017, and July 30, 2017, and failing to submit to biological  
25 fluid testing on or about July 30, 2017. The Board ordered Respondent to pay a \$350.00 fine  
26 within 30 days of receipt of the citation. Citation Order No. 8002017035359 was served on  
27 Respondent by certified mail on or about September 18, 2017, September 25, 2017, and July 20,

28       ///

1 2018. An electronic copy of Citation Order No. 8002017035359 was e-mailed to Respondent on  
2 or about May 29, 2018. Respondent failed to pay the fine.

3 26. On or about July 3, 2018, the Board issued Citation Order No. 8002018045408 for  
4 failing to check in for biological fluid testing on approximately seven (7) occasions from on or  
5 about May 17, 2018 through May 22, 2018, and May 27, 2018, and failing to submit to biological  
6 fluid testing on or about May 23, 2018. The Board ordered Respondent to pay a \$700.00 fine.  
7 Citation Order No. 8002018045408 was served on Respondent by certified mail on or about July  
8 3, 2018 and July 20, 2018. Respondent failed to pay the fine.

9 **PRAYER**

10 WHEREFORE, Petitioner requests that a hearing be held on the matters herein alleged, and  
11 that following the hearing, the Medical Board of California issue a decision:

12 1. Revoking the probation that was granted by the Medical Board of California in Case  
13 Nos. 04-2013-235019 and 800-2017-035603, and imposing the disciplinary orders that were  
14 stayed, thereby revoking Physician's and Surgeon's Certificate No. G15640 issued to Respondent  
15 Thomas S. Powers, M.D.;

16 2. Revoking, suspending or denying approval of Respondent Thomas S. Powers, M.D.'s  
17 authority to supervise physician assistants, pursuant to section 3527 of the Code, and advanced  
18 practice nurses;

19 3. Ordering Respondent Thomas S. Powers, M.D., if placed on probation, to pay the  
20 Medical Board of California the costs of probation monitoring; and

21 4. Taking such other and further action as deemed necessary and proper.

22  
23 DATED: May 20, 2019

  
KIMBERLY KIRCHMEYER  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
Petitioner

## **Exhibit A**

### **Decision and Order**

**Medical Board of California Case No. 800-2017-035603**

### **Decision and Order**

**Medical Board of California Case No. 04-2013-235019**

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke  
Probation Against:

THOMAS S. POWERS, M.D.

Physician's and Surgeon's  
Certificate No. G 15640

Respondent

Case No. 800-2017-035603

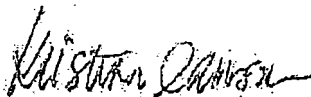
DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on May 2, 2018.

IT IS SO ORDERED: April 2, 2018.

MEDICAL BOARD OF CALIFORNIA



Kristina D. Lawson, J.D., Chair  
Panel B

MEDICAL BOARD OF CALIFORNIA  
I do hereby certify that this document is a true  
and correct copy of the original on file in this  
office.

S. J. Woods  
Signature  
For Custodian of Records  
Title

7/18/2018  
Date

AGO-0035

1 XAVIER BECERRA  
Attorney General of California  
2 ALEXANDRA M. ALVAREZ  
Supervising Deputy Attorney General  
3 CHRISTINE A. RHEE  
Deputy Attorney General  
4 State Bar No. 295656  
600 West Broadway, Suite 1800  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 738-9455  
7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

10  
11  
12  
BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

13 In the Matter of the Petition to Revoke  
14 Probation Against:

Case No. 800-2017-035603

15 THOMAS S. POWERS, M.D.  
2112 E. 4th Street, Ste. 100  
16 Santa Ana, CA 92705

STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER

17 Physician's and Surgeon's Certificate No.  
G15640,

18 Respondent.

19  
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
21 entitled proceedings that the following matters are true:

22 PARTIES

23 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board  
24 of California (Board). She brought this action solely in her official capacity and is represented in  
25 this matter by Xavier Becerra, Attorney General of the State of California, by Christine A. Rhee,  
26 Deputy Attorney General.

27 2. Respondent Thomas S. Powers, M.D. (Respondent) is represented in this proceeding  
28 by attorney John D. Martin, Esq., whose address is: 319 Harvard Avenue, Claremont, CA 91711.



1 3. On or about October 18, 1968, the Board issued Physician's and Surgeon's Certificate  
2 No. G15640 to Thomas S. Powers, M.D. (Respondent). Physician's and Surgeon's Certificate  
3 No. G15640 was in full force and effect at all times relevant to the charges brought in Petition to  
4 Revoke Probation No. 800-2017-035603, and will expire on August 31, 2019, unless renewed.

5 JURISDICTION

6 4. Petition to Revoke Probation No. 800-2017-035603 was filed before the Board, and is  
7 currently pending against Respondent. The Petition to Revoke Probation and all other statutorily  
8 required documents were properly served on Respondent on September 14, 2017. Respondent  
9 timely filed his Notice of Defense contesting the Petition to Revoke Probation.

10 5. On or about October 16, 2017, the Board issued an Order Correcting *Nunc Pro Tunc*  
11 Condition 3 of the Decision and Order in Case No. 04-2013-235019.

12 6. A copy of Petition to Revoke Probation No. 800-2017-035603 is attached as Exhibit  
13 A and is incorporated by reference herein.

14 ADVISEMENT AND WAIVERS

15 7. Respondent has carefully read, fully discussed with counsel, and understands the  
16 charges and allegations in Petition to Revoke Probation No. 800-2017-035603. Respondent has  
17 also carefully read, fully discussed with counsel, and understands the effects of this Stipulated  
18 Settlement and Disciplinary Order.

19 8. Respondent is fully aware of his legal rights in this matter, including the right to a  
20 hearing on the charges and allegations in the Petition to Revoke Probation; the right to confront  
21 and cross-examine the witnesses against him; the right to present evidence and to testify on his  
22 own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the  
23 production of documents; the right to reconsideration and court review of an adverse decision;  
24 and all other rights accorded by the California Administrative Procedure Act and other applicable  
25 laws.

26 9. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently  
27 waives and gives up each and every right set forth above.

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CULPABILITY

10. Respondent admits the truth of each and every charge and allegation in Petition to Revoke Probation No. 800-2017-035603.

11. Respondent agrees that his Physician's and Surgeon's Certificate No. C15640 is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

12. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and Disciplinary Order, the Board may receive oral and written communications from its staff and/or the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving Respondent. In the event that the Board does not, in its discretion, approve and adopt this Stipulated Settlement and Disciplinary Order, with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party

1 hereto. Respondent further agrees that should this Stipulated Settlement and Disciplinary Order  
2 be rejected for any reason by the Board, Respondent will assert no claim that the Board, or any  
3 member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this  
4 Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

5 ADDITIONAL PROVISIONS

6 14. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to  
7 be an integrated writing representing the complete, final and exclusive embodiment of the  
8 agreements of the parties in the above-entitled matter.

9 15. The parties agree that copies of this Stipulated Settlement and Disciplinary Order,  
10 including copies of the signatures of the parties, may be used in lieu of original documents and  
11 signatures and, further, that such copies shall have the same force and effect as originals.

12 16. In consideration of the foregoing admissions and stipulations, the parties agree that  
13 the Board may, without further notice or formal proceeding, issue and enter the following  
14 Disciplinary Order:

15 DISCIPLINARY ORDER

16 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G15640 issued  
17 to Respondent Thomas S. Powers, M.D., is revoked. However, the revocation is stayed and  
18 Respondent is placed on probation on the following terms and conditions:

19 1. ONE (1) YEAR OF ADDITIONAL PROBATION. Respondent is placed on  
20 probation for one (1) year, which grant of additional probation shall run consecutive to the term  
21 of probation previously ordered in Stipulated Settlement and Disciplinary Order in Case No. 04-  
22 2013-235019.

23 2. ACTUAL SUSPENSION. As part of probation, Respondent is suspended from the  
24 practice of medicine for 30 days as of the effective date of this decision.

25 3. CONTROLLED SUBSTANCES - PARTIAL RESTRICTION. Respondent shall not  
26 order, prescribe, dispense, administer, furnish, or possess any Schedule II or Schedule III  
27 controlled substances as defined by the California Uniform Controlled Substances Act, except for  
28 anabolic steroids pursuant to California Health and Safety Code Section 11056, subdivision (f).

Respondent further agrees that he will only order, prescribe, dispense, administer, furnish, or possess Suboxone to treat patients for substance dependence or addiction only.

4. CONTROLLED SUBSTANCES - MAINTAIN RECORDS AND ACCESS TO RECORDS AND INVENTORIES. Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by Respondent, and any recommendation or approval which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all of the following: (1) the name and address of the patient; (2) the date; (3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

5. CONTROLLED SUBSTANCES - ABSTAIN FROM USE. Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed or recommended to Respondent by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawfully prescribed or recommended medications, Respondent shall notify the Board or its designee of the following: (1) issuing practitioner's name, address, and telephone number; (2) medication name, strength, and quantity; and (3) issuing pharmacy name, address, and telephone number.

6. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at

1 correcting any areas of deficient practice or knowledge and shall be Category I certified. The  
2 educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to  
3 the Continuing Medical Education (CME) requirements for renewal of licensure. Following the  
4 completion of each course, the Board or its designee may administer an examination to test  
5 Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65  
6 hours of CME of which 40 hours were in satisfaction of this condition.

7       7. PREScribing PRACTICES COURSE. Within 60 calendar days of the effective  
8 date of this Decision, Respondent shall enroll in a course in prescribing practices approved in  
9 advance by the Board or its designee. Respondent shall provide the approved course provider  
10 with any information and documents that the approved course provider may deem pertinent.  
11 Respondent shall participate in and successfully complete the classroom component of the course  
12 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully  
13 complete any other component of the course within one (1) year of enrollment. The prescribing  
14 practices course shall be at Respondent's expense and shall be in addition to the Continuing  
15 Medical Education (CME) requirements for renewal of licensure.

16       A prescribing practices course taken after the acts that gave rise to the charges in the  
17 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board  
18 or its designee, be accepted towards the fulfillment of this condition if the course would have  
19 been approved by the Board or its designee had the course been taken after the effective date of  
20 this Decision.

21       Respondent shall submit a certification of successful completion to the Board or its  
22 designee not later than 15 calendar days after successfully completing the course, or not later than  
23 15 calendar days after the effective date of the Decision, whichever is later.

24       8. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective  
25 date of this Decision, Respondent shall enroll in a course in medical record keeping approved in  
26 advance by the Board or its designee. Respondent shall provide the approved course provider  
27 with any information and documents that the approved course provider may deem pertinent.  
28 Respondent shall participate in and successfully complete the classroom component of the course

1 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully  
2 complete any other component of the course within one (1) year of enrollment. The medical  
3 record keeping course shall be at Respondent's expense and shall be in addition to the Continuing  
4 Medical Education (CME) requirements for renewal of licensure.

5 A medical record keeping course taken after the acts that gave rise to the charges in the  
6 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board  
7 or its designee, be accepted towards the fulfillment of this condition if the course would have  
8 been approved by the Board or its designee had the course been taken after the effective date of  
9 this Decision.

10 Respondent shall submit a certification of successful completion to the Board or its  
11 designee, not later than 15 calendar days after successfully completing the course, or not later than  
12 15 calendar days after the effective date of the Decision, whichever is later.

13 9. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of  
14 the effective date of this Decision, Respondent shall enroll in a professionalism program, that  
15 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1.  
16 Respondent shall participate in and successfully complete that program. Respondent shall  
17 provide any information and documents that the program may deem pertinent. Respondent shall  
18 successfully complete the classroom component of the program not later than six (6) months after  
19 Respondent's initial enrollment, and the longitudinal component of the program not later than the  
20 time specified by the program, but no later than one (1) year after attending the classroom  
21 component. The professionalism program shall be at Respondent's expense and shall be in  
22 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

23 A professionalism program taken after the acts that gave rise to the charges in the  
24 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board  
25 or its designee, be accepted towards the fulfillment of this condition if the program would have  
26 been approved by the Board or its designee had the program been taken after the effective date of  
27 this Decision.

28 ///

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the program or not later than 15 calendar days after the effective date of the Decision, whichever is later.

10. CLINICAL COMPETENCE ASSESSMENT PROGRAM. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. Respondent shall successfully complete the program not later than six (6) months after Respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of Respondent's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to Respondent's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. The program shall require Respondent's on-site participation for a minimum of three (3) and no more than five (5) days as determined by the program for the assessment and clinical education evaluation. Respondent shall pay all expenses associated with the clinical competence assessment program.

At the end of the evaluation, the program will submit a report to the Board or its designee which unequivocally states whether the Respondent has demonstrated the ability to practice safely and independently. Based on Respondent's performance on the clinical competence assessment, the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting Respondent's practice of medicine. Respondent shall comply with the program's recommendations.

Determination as to whether Respondent successfully completed the clinical competence assessment program is solely within the program's jurisdiction.

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1 If Respondent fails to enroll, participate in, or successfully complete the clinical  
2 competence assessment program within the designated time period, Respondent shall receive a  
3 notification from the Board or its designee to cease the practice of medicine within three (3)  
4 calendar days after being so notified. The Respondent shall not resume the practice of medicine  
5 until enrollment or participation in the outstanding portions of the clinical competence assessment  
6 program have been completed. If the Respondent did not successfully complete the clinical  
7 competence assessment program, the Respondent shall not resume the practice of medicine until a  
8 final decision has been rendered on the accusation and/or a petition to revoke probation. The  
9 cessation of practice shall not apply to the reduction of the probationary time period.]

10 11. PSYCHIATRIC EVALUATION. Within 30 calendar days of the effective date of  
11 this Decision, and on whatever periodic basis thereafter may be required by the Board or its  
12 designee, Respondent shall undergo and complete a psychiatric evaluation (and psychological  
13 testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall  
14 consider any information provided by the Board or designee and any other information the  
15 psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its  
16 designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not  
17 be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all  
18 psychiatric evaluations and psychological testing.

19 Respondent shall comply with all restrictions or conditions recommended by the evaluating  
20 psychiatrist within 15 calendar days after being notified by the Board or its designee.

21 Respondent shall not engage in the practice of medicine until notified by the Board or its  
22 designee that Respondent is mentally fit to practice medicine safely. The period of time that  
23 Respondent is not practicing medicine shall not be counted toward completion of the term of  
24 probation.

25 12. MEDICAL EVALUATION AND TREATMENT. Within 30 calendar days of the  
26 effective date of this Decision, and on a periodic basis thereafter as may be required by the Board  
27 or its designee, Respondent shall undergo a medical evaluation by a Board-appointed physician  
28 who shall consider any information provided by the Board or designee and any other information



1 the evaluating physician deems relevant and shall furnish a medical report to the Board or its  
2 designee. Respondent shall provide the evaluating physician with any information and  
3 documentation that the evaluating physician may deem pertinent.

4 Following the evaluation, Respondent shall comply with all restrictions or conditions  
5 recommended by the evaluating physician within 15 calendar days after being notified by the  
6 Board or its designee. If Respondent is required by the Board or its designee to undergo medical  
7 treatment, Respondent shall within 30 calendar days of the requirement notice, submit to the  
8 Board or its designee for prior approval the name and qualifications of a California licensed  
9 treating physician of Respondent's choice. Upon approval of the treating physician, Respondent  
10 shall within 15 calendar days undertake medical treatment and shall continue such treatment until  
11 further notice from the Board or its designee.

12 The treating physician shall consider any information provided by the Board or its designee  
13 or any other information the treating physician may deem pertinent prior to commencement of  
14 treatment. Respondent shall have the treating physician submit quarterly reports to the Board or  
15 its designee indicating whether or not the Respondent is capable of practicing medicine safely.  
16 Respondent shall provide the Board or its designee with any and all medical records pertaining to  
17 treatment that the Board or its designee deems necessary.

18 If, prior to the completion of probation, Respondent is found to be physically incapable of  
19 resuming the practice of medicine without restrictions, the Board shall retain continuing  
20 jurisdiction over Respondent's license and the period of probation shall be extended until the  
21 Board determines that Respondent is physically capable of resuming the practice of medicine  
22 without restrictions. Respondent shall pay the cost of the medical evaluation(s) and treatment.

23 Respondent shall not engage in the practice of medicine until notified in writing by the  
24 Board or its designee of its determination that Respondent is medically fit to practice safely.

25 13. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this  
26 Decision, Respondent shall submit to the Board or its designee for prior approval as a practice  
27 monitor, the name and qualifications of one or more licensed physicians and surgeons whose  
28 licenses are valid and in good standing, and who are preferably American Board of Medical

1 Specialties (ABMS) certified. A monitor shall have no prior or current business or personal  
2 relationship with Respondent, or other relationship that could reasonably be expected to  
3 compromise the ability of the monitor to render fair and unbiased reports to the Board, including  
4 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree  
5 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

6 The Board or its designee shall provide the approved monitor with copies of the Decision,  
7 Petition to Revoke Probation, and a proposed monitoring plan. Within 15 calendar days of  
8 receipt of the Decision, Petition to Revoke Probation, and proposed monitoring plan, the monitor  
9 shall submit a signed statement that the monitor has read the Decision and Petition to Revoke  
10 Probation, fully understands the role of a monitor, and agrees or disagrees with the proposed  
11 monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall  
12 submit a revised monitoring plan with the signed statement for approval by the Board or its  
13 designee.

14 Within 60 calendar days of the effective date of this Decision, and continuing throughout  
15 probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall  
16 make all records available for immediate inspection and copying on the premises by the monitor  
17 at all times during business hours and shall retain the records for the entire term of probation.

18 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective  
19 date of this Decision, Respondent shall receive a notification from the Board or its designee to  
20 cease the practice of medicine within three (3) calendar days after being so notified. Respondent  
21 shall cease the practice of medicine until a monitor is approved to provide monitoring  
22 responsibility.

23 The monitor shall submit a quarterly written report to the Board or its designee which  
24 includes an evaluation of Respondent's performance, indicating whether Respondent's practices  
25 are within the standards of practice of medicine, and whether Respondent is practicing medicine  
26 safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the  
27 quarterly written reports to the Board or its designee within 10 calendar days after the end of the  
28 preceding quarter.

1 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of  
2 such resignation or unavailability, submit to the Board or its designee, for prior approval, the  
3 name and qualifications of a replacement monitor who will be assuming that responsibility within  
4 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60  
5 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a  
6 notification from the Board or its designee to cease the practice of medicine within three (3)  
7 calendar days after being so notified. Respondent shall cease the practice of medicine until a  
8 replacement monitor is approved and assumes monitoring responsibility.

9 In lieu of a monitor, Respondent may participate in a professional enhancement program  
10 approved in advance by the Board or its designee that includes, at minimum, quarterly chart  
11 review, semi-annual practice assessment, and semi-annual review of professional growth and  
12 education. Respondent shall participate in the professional enhancement program at Respondent's  
13 expense during the term of probation.

14 14. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to  
15 biological fluid testing, at Respondent's expense, upon request of the Board or its designee.  
16 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair  
17 follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall  
18 make daily contact with the Board or its designee to determine whether biological fluid testing is  
19 required. Respondent shall be tested on the date of the notification as directed by the Board or its  
20 designee. The Board may order a Respondent to undergo a biological fluid test on any day, at  
21 any time, including weekends and holidays. Except when testing on a specific date as ordered by  
22 the Board or its designee, the scheduling of biological fluid testing shall be done on a random  
23 basis. The cost of biological fluid testing shall be borne by the Respondent.

24 During the first year of probation, Respondent shall be subject to 52 to 104 random tests.  
25 During the second year of probation and for the duration of the probationary term, up to five (5)  
26 years, Respondent shall be subject to 36 to 104 random tests per year. Only if there has been no  
27 positive biological fluid tests in the previous five (5) consecutive years of probation, may testing

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1 be reduced to one (1) time per month. Nothing precludes the Board from increasing the number  
2 of random tests to the first-year level of frequency for any reason.

3 Prior to practicing medicine, Respondent shall contract with a laboratory or service,  
4 approved in advance by the Board or its designee, that will conduct random, unannounced,  
5 observed, biological fluid testing and meets all of the following standards:

6 (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry  
7 Association or have completed the training required to serve as a collector for the United  
8 States Department of Transportation.

9 (b) Its specimen collectors conform to the current United States Department of  
10 Transportation Specimen Collection Guidelines.

11 (c) Its testing locations comply with the Urine Specimen Collection Guidelines published  
12 by the United States Department of Transportation without regard to the type of test  
13 administered.

14 (d) Its specimen collectors observe the collection of testing specimens.

15 (e) Its laboratories are certified and accredited by the United States Department of Health  
16 and Human Services.

17 (f) Its testing locations shall submit a specimen to a laboratory within one (1) business day  
18 of receipt and all specimens collected shall be handled pursuant to chain of custody  
19 procedures. The laboratory shall process and analyze the specimens and provide legally  
20 defensible test results to the Board within seven (7) business days of receipt of the  
21 specimen. The Board will be notified of non-negative results within one (1) business day  
22 and will be notified of negative test results within seven (7) business days.

23 (g) Its testing locations possess all the materials, equipment, and technical expertise  
24 necessary in order to test Respondent on any day of the week.

25 (h) Its testing locations are able to scientifically test for urine, blood, and hair specimens  
26 for the detection of alcohol and illegal and controlled substances.

27 (i) It maintains testing sites located throughout California.

28 ///

(j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the Respondent to check in daily for testing.

(k) It maintains a secure, HIPAA-compliant website or computer system that allows staff access to drug test results and compliance reporting information that is available 24 hours a day.

(l) It employs or contracts with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory biological fluid test results, medical histories, and any other information relevant to biomedical information.

(m) It will not consider a toxicology screen to be negative if a positive result is obtained while practicing, even if the Respondent holds a valid prescription for the substance.

Prior to changing testing locations for any reason, including during vacation or other travel, alternative testing locations must be approved by the Board and meet the requirements above.

The contract shall require that the laboratory directly notify the Board or its designee of non-negative results within one (1) business day and negative test results within seven (7) business days of the results becoming available. Respondent shall maintain this laboratory or service contract during the period of probation.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and Respondent.

If a biological fluid test result indicates Respondent has used, consumed, ingested, or administered to himself a prohibited substance, the Board shall order Respondent to cease practice and instruct Respondent to leave any place of work where Respondent is practicing medicine or providing medical services. The Board shall immediately notify all of Respondent's employers, supervisors and work monitors, if any, that Respondent may not practice medicine or provide medical services while the cease-practice order is in effect.

A biological fluid test will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited substance use exists, the Board shall lift the cease-practice order within one (1) business day.

1 After the issuance of a cease-practice order, the Board shall determine whether the positive  
2 biological fluid test is in fact evidence of prohibited substance use by consulting with the  
3 specimen collector and the laboratory, communicating with the licensee, his treating physician(s),  
4 other health care provider, or group facilitator, as applicable.

5 For purposes of this condition, the terms "biological fluid testing" and "testing" mean the  
6 acquisition and chemical analysis of a Respondent's urine, blood, breath, or hair.

7 For purposes of this condition, the term "prohibited substance" means an illegal drug, a  
8 lawful drug not prescribed, recommended or ordered by an appropriately licensed health care  
9 provider for use by Respondent and approved by the Board, alcohol, or any other substance the  
10 Respondent has been instructed by the Board not to use, consume, ingest, or administer to  
11 himself.

12 If the Board confirms that a positive biological fluid test is evidence of use of a prohibited  
13 substance, Respondent has committed a major violation, as defined in section 1361.52(a), and the  
14 Board shall impose any or all of the consequences set forth in section 1361.52(b), in addition to  
15 any other terms or conditions the Board determines are necessary for public protection or to  
16 enhance Respondent's rehabilitation.

17 15. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the  
18 Respondent shall provide a true copy of this Decision and the Petition to Revoke Probation to the  
19 Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership  
20 are extended to Respondent, at any other facility where Respondent engages in the practice of  
21 medicine, including all physician and locum tenens registries or other similar agencies, and to the  
22 Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage  
23 to Respondent. Respondent shall submit proof of compliance to the Board or its designee within  
24 15 calendar days.

25 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

26 16. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE  
27 NURSES. During probation, Respondent is prohibited from supervising physician assistants and  
28 advanced practice nurses.

1 17. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules  
2 governing the practice of medicine in California and remain in full compliance with any court  
3 ordered criminal probation, payments, and other orders.

4 18. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations  
5 under penalty of perjury on forms provided by the Board, stating whether there has been  
6 compliance with all the conditions of probation.

7 Respondent shall submit quarterly declarations not later than 10 calendar days after the end  
8 of the preceding quarter.

9 19. GENERAL PROBATION REQUIREMENTS.

10 Compliance with Probation Unit

11 Respondent shall comply with the Board's probation unit.

12 Address Changes

13 Respondent shall, at all times, keep the Board informed of Respondent's business and  
14 residence addresses, email address (if available), and telephone number. Changes of such  
15 addresses shall be immediately communicated in writing to the Board or its designee. Under no  
16 circumstances shall a post office box serve as an address of record, except as allowed by Business  
17 and Professions Code section 2021(b).

18 Place of Practice

19 Respondent shall not engage in the practice of medicine in Respondent's or patient's place  
20 of residence, unless the patient resides in a skilled nursing facility or other similar licensed  
21 facility.

22 License Renewal

23 Respondent shall maintain a current and renewed California physician's and surgeon's  
24 license.

25 Travel or Residence Outside California

26 Respondent shall immediately inform the Board or its designee, in writing, of travel to any  
27 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty  
28 (30) calendar days.

1 In the event Respondent should leave the State of California to reside or to practice,  
2 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of  
3 departure and return.

4 20. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be  
5 available in person upon request for interviews either at Respondent's place of business or at the  
6 probation unit office, with or without prior notice throughout the term of probation.

7 21. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or  
8 its designee in writing within 15 calendar days of any periods of non-practice lasting more than  
9 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is  
10 defined as any period of time Respondent is not practicing medicine as defined in Business and  
11 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct  
12 patient care, clinical activity or teaching, or other activity as approved by the Board. If  
13 Respondent resides in California and is considered to be in non-practice, Respondent shall  
14 comply with all terms and conditions of probation. All time spent in an intensive training  
15 program which has been approved by the Board or its designee shall not be considered non-  
16 practice and does not relieve Respondent from complying with all the terms and conditions of  
17 probation. Practicing medicine in another state of the United States or Federal jurisdiction while  
18 on probation with the medical licensing authority of that state or jurisdiction shall not be  
19 considered non-practice. A Board-ordered suspension of practice shall not be considered as a  
20 period of non-practice.

21 In the event Respondent's period of non-practice while on probation exceeds 18 calendar  
22 months, Respondent shall successfully complete the Federation of State Medical Boards' Special  
23 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program  
24 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model  
25 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

26 Respondent's period of non-practice while on probation shall not exceed two (2) years.

27 Periods of non-practice will not apply to the reduction of the probationary term.

28 Periods of non-practice for a Respondent residing outside of California will relieve



1 Respondent of the responsibility to comply with the probationary terms and conditions with the  
2 exception of this condition and the following terms and conditions of probation: Obey All Laws;  
3 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Controlled  
4 Substances; and Biological Fluid Testing.

5 22. COMPLETION OF PROBATION. Respondent shall comply with all financial  
6 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the  
7 completion of probation. Upon successful completion of probation, Respondent's certificate shall  
8 be fully restored.

9 23. VIOLATION OF PROBATION. Failure to fully comply with any term or condition  
10 of probation is a violation of probation. If Respondent violates probation in any respect, the  
11 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and  
12 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke  
13 Probation, or an Interim Suspension Order is filed against Respondent during probation, the  
14 Board shall have continuing jurisdiction until the matter is final, and the period of probation shall  
15 be extended until the matter is final.

16 24. LICENSE SURRENDER. Following the effective date of this Decision, if  
17 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy  
18 the terms and conditions of probation, Respondent may request to surrender his license. The  
19 Board reserves the right to evaluate Respondent's request and to exercise its discretion in  
20 determining whether or not to grant the request, or to take any other action deemed appropriate  
21 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent  
22 shall, within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its  
23 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject  
24 to the terms and conditions of probation. If Respondent re-applies for a medical license, the  
25 application shall be treated as a petition for reinstatement of a revoked certificate.

26 25. PROBATION MONITORING COSTS. Respondent shall pay the costs associated  
27 with probation monitoring each and every year of probation, as designated by the Board, which  
28 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of

1 California and delivered to the Board or its designee no later than January 31 of each calendar  
2 year.

3 ACCEPTANCE

4 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
5 discussed it with my attorney, John D. Martin, Esq. I understand the stipulation and the effect it  
6 will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and  
7 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the  
8 Decision and Order of the Medical Board of California.

9  
10 DATED: 1-16-18

Thomas S. Powers M.D.  
THOMAS S. POWERS, M.D.  
Respondent

12 I have read and fully discussed with Respondent Thomas S. Powers, M.D., the terms and  
13 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.  
14 I approve its form and content.

15 DATED: 1-16-18

John D. Martin, Esq.  
JOHN D. MARTIN, ESQ.  
Attorney for Respondent

16  
17  
18 ENDORSEMENT

19 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
20 submitted for consideration by the Medical Board of California

21 Dated:

Respectfully submitted,

22 XAVIER BUCERRA  
23 Attorney General of California  
24 ALEXANDRA M. ALVAREZ  
Supervising Deputy Attorney General

25  
26 CHRISTINE A. RHEE  
27 Deputy Attorney General  
Attorneys for Complainant

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1 California and delivered to the Board or its designee no later than January 31 of each calendar  
2 year.

3 ACCEPTANCE

4 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
5 discussed it with my attorney, John D. Martin, Esq. I understand the stipulation and the effect it  
6 will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and  
7 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the  
8 Decision and Order of the Medical Board of California.

9  
10 DATED: \_\_\_\_\_

11 THOMAS S. POWERS, M.D.  
12 *Respondent*

13 I have read and fully discussed with Respondent Thomas S. Powers, M.D., the terms and  
14 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.  
15 I approve its form and content.

16 DATED: \_\_\_\_\_

17 JOHN D. MARTIN, ESQ.  
18 *Attorney for Respondent*

19 ENDORSEMENT

20 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
21 submitted for consideration by the Medical Board of California

22 Dated: 1/17/12

23 Respectfully submitted,

24 XAVIER BECERRA  
25 Attorney General of California  
26 ALEXANDRA M. ALVAREZ  
27 Supervising Deputy Attorney General

28 

CHRISTINE A. RHEE  
Deputy Attorney General  
Attorneys for Complainant

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**Exhibit A**

**Petition to Revoke Probation No. 800-2017-035603**

**AGO-0056**

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO September 14, 2017  
BY Rolyn Franker ANALYST

XAVIER BECERRA  
Attorney General of California  
ALEXANDRA M. ALVAREZ  
Supervising Deputy Attorney General  
CHRISTINE A. RHEE  
Deputy Attorney General  
State Bar No. 295656  
600 West Broadway, Suite 1800  
San Diego, CA 92101  
P.O. Box 85266  
San Diego, CA 92186-5266  
Telephone: (619) 738-9455  
Facsimile: (619) 645-2061

*Attorneys for Complainant*

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke  
Probation Against:

Thomas S. Powers, M.D.  
2112 E. 4th Street, Ste. 100  
Santa Ana, CA 92705

Physician's and Surgeon's Certificate  
No. G15640,

Respondent.

Case No. 800-2017-035603

PETITION TO REVOKE PROBATION

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Petition to Revoke Probation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about October 18, 1968, the Medical Board issued Physician's and Surgeon's Certificate No. G15640 to Thomas S. Powers, M.D. (Respondent). Respondent's Physician's and Surgeon's Certificate No. G15640 was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2019, unless renewed.

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1 7. On or about May 27, 2009, the Board issued a Public Letter of Reprimand for Case  
2 No. 06-2007-184451, for violating Business and Professions Code section 2266, for failing to  
3 maintain adequate and accurate records for the care and treatment of three (3) patients.  
4 Respondent was ordered to successfully complete a medical record keeping course.

5 JURISDICTION

6 8. This Petition to Revoke Probation is brought before the Board under the authority of  
7 the following laws and the Board's Decision and Order in Case No. 04-2013-235019. All section  
8 references are to the Business and Professions Code (Code) unless otherwise indicated.

9 9. Section 2227 of the Code states:

10 "(a) A licensee whose matter has been heard by an administrative law judge of  
11 the Medical Quality Hearing Panel as designated in Section 11371 of the Government  
12 Code, or whose default has been entered, and who is found guilty, or who has entered  
13 into a stipulation for disciplinary action with the board, may, in accordance with the  
14 provisions of this chapter:

15 "(1) Have his or her license revoked upon order of the board.

16 "(2) Have his or her right to practice suspended for a period not to exceed one  
17 year upon order of the board.

18 "(3) Be placed on probation and be required to pay the costs of probation  
19 monitoring upon order of the board.

20 "(4) Be publicly reprimanded by the board. The public reprimand may include a  
21 requirement that the licensee complete relevant educational courses approved by the  
22 board.

23 "(5) Have any other action taken in relation to discipline as part of an order of  
24 probation, as the board or an administrative law judge may deem proper.

25 "..."

26 ///

27 ///

28 ///

1 FIRST CAUSE TO REVOKE PROBATION

2 (Failure to Comply with Required Biological Fluid Testing)

3 10. At all times after the effective date of Respondent's probation in Case No. 04-2013-  
4 235019, Condition No. 4 of Respondent's probation provided:

5 "4. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to  
6 biological fluid testing, at Respondent's expense, upon request of the Board or its  
7 designee. "Biological fluid testing" may include, but is not limited to, urine, blood,  
8 breathalyzer hair follicle testing, or similar drug screening approved by the Board or its  
9 designee. Prior to practicing medicine, Respondent shall contract with a laboratory or  
10 service approved in advance by the Board or its designee that will conduct random,  
11 unannounced, observed, biological fluid testing. The contract shall require results of  
12 the tests to be transmitted by the laboratory or service directly to the Board or its  
13 designee within four hours of the results becoming available. Respondent shall  
14 maintain this laboratory or service contract during the period of probation.

15 "A certified copy of any laboratory test result may be received in evidence in any  
16 proceedings between the Board and Respondent.

17 "If Respondent fails to cooperate in a random biological fluid testing program  
18 within the specified time frame, Respondent shall receive a notification from the Board  
19 or its designee to immediately cease the practice of medicine. Respondent shall not  
20 resume the practice of medicine until the final decision on an accusation and/or a  
21 petition to revoke probation is effective. An accusation and/or petition to revoke  
22 probation shall be filed by the Board within 30 days of the notification to cease  
23 practice. If Respondent requests a hearing on the accusation and/or petition to revoke  
24 probation, the Board shall provide Respondent with a hearing within 30 days of the  
25 request, unless Respondent stipulates in writing to a later hearing. If the case is heard  
26 by an Administrative Law Judge alone, he or she shall forward a Proposed Decision to  
27 the Board within 15 days of submission of the matter. Within 15 days of receipt by the  
28 Board of the Administrative Law Judge's proposed decision, the Board shall issue its



1 Decision, unless good cause can be shown for the delay. If the case is heard by the  
2 Board, the Board shall issue its decision within 15 days of submission of the case,  
3 unless good cause can be shown for the delay. Good cause includes, but is not limited  
4 to, non-adoption of the proposed decision, request for reconsideration, remands and  
5 other interlocutory orders issued by the Board. The cessation of practice shall not  
6 apply to the reduction of the probationary time period.

7 "If the Board does not file an accusation or petition to revoke probation within 30  
8 days of the issuance of the notification to cease practice or does not provide  
9 Respondent with a hearing within 30 days of such a request, the notification of cease  
10 practice shall be dissolved."

11 11. On or about July 19, 2017, Respondent entered into an agreement with FirstSource  
12 Solutions.

13 12. Pursuant to Condition No. 4 of Respondent's probation and the agreement entered  
14 into between Respondent and FirstSource Solutions, Respondent was required, among others, to  
15 submit to random biological fluid tests administered by FirstSource Solutions. In order to  
16 ascertain whether he had been selected to be tested on any particular day, Respondent was  
17 required to make daily contact with FirstSource Solutions, through the FirstSource Solutions  
18 website, the FirstSource Solutions mobile app, or by telephone to the FirstSource Solutions  
19 Interactive Voice Response system. If selected for testing, Respondent was then required to  
20 report to a FirstSource Solutions-approved testing site and be tested that same day.

21 13. On or about August 2, 2017, Respondent failed to check in with FirstSource  
22 Solutions.

23 14. On or about August 6, 2017, Respondent failed to check in with FirstSource  
24 Solutions. On or about August 6, 2017, Respondent additionally failed to report to a FirstSource  
25 approved testing site to provide a biological fluid sample, as he had been selected to test that day.

26 15. On or about August 7, 2017, Respondent failed to check in with FirstSource  
27 Solutions.

28 ///

1 16. On or about August 8, 2017, Respondent failed to check in with FirstSource  
2 Solutions.

3 17. On or about August 11, 2017, Respondent failed to check in with FirstSource  
4 Solutions. On or about August 11, 2017, Respondent additionally failed to report to a FirstSource  
5 approved testing site to provide a biological fluid sample, as he had been selected to test that day.

6 18. On or about August 12, 2017, Respondent failed to check in with FirstSource  
7 Solutions.

8 19. On or about August 24, 2017, Respondent failed to check in with FirstSource  
9 Solutions.

10 20. On or about August 26, 2017, Respondent failed to check in with FirstSource  
11 Solutions.

12 21. On or about August 27, 2017, Respondent failed to check in with FirstSource  
13 Solutions.

14 22. On or about August 28, 2017, Respondent failed to check in with FirstSource  
15 Solutions.

16 23. On or about August 29, 2017, Respondent failed to check in with FirstSource  
17 Solutions.

18 24. On or about August 30, 2017, Respondent failed to check in with FirstSource  
19 Solutions. On or about August 30, 2017, Respondent additionally failed to report to a FirstSource  
20 approved testing site to provide a biological fluid sample, as he had been selected to test that day.

21 25. On or about August 31, 2017, Respondent failed to check in with FirstSource  
22 Solutions.

23 26. On or about September 1, 2017, Respondent failed to check in with FirstSource  
24 Solutions.

25 27. On or about September 2, 2017, Respondent failed to check in with FirstSource  
26 Solutions. On or about September 2, 2017, Respondent additionally failed to report to a  
27 FirstSource approved testing site to provide a biological fluid sample, as he had been selected to  
28 test that day.

1 28. On or about September 3, 2017, Respondent failed to check in with FirstSource  
2 Solutions.

3 29. On or about September 4, 2017, Respondent failed to check in with FirstSource  
4 Solutions.

5 30. On or about September 5, 2017, Respondent failed to check in with FirstSource  
6 Solutions.

7 31. On or about September 6, 2017, Respondent failed to check in with FirstSource  
8 Solutions.

9 32. On or about September 7, 2017, Respondent failed to check in with FirstSource  
10 Solutions.

11 33. Respondent's probation is subject to revocation because he failed to comply with  
12 Condition No. 4 of his probation in Case No. 04-2013-235019.

13 P R A Y E R

14 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
15 and that following the hearing, the Medical Board of California issue a decision:

16 1. Revoking or suspending Physician's and Surgeon's Certificate No. G15640, issued to  
17 Respondent Thomas S. Powers, M.D.;

18 2. Revoking the probation that was granted by the Medical Board of California in Case  
19 No. 04-2013-235019, and imposing the disciplinary order that was stayed, thereby revoking  
20 Physician's and Surgeon's Certificate No. G15640, issued to Respondent Thomas S. Powers,  
21 M.D.;

22 3. Revoking, suspending or denying approval of Respondent Thomas S. Powers, M.D.'s  
23 authority to supervise physician assistants, pursuant to section 3527 of the Code, and advanced  
24 practice nurses;

25 4. Ordering Respondent Thomas S. Powers, M.D., if placed on probation, to pay the  
26 Board the costs of probation monitoring; and

27 ///

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1 5. Taking such other and further action as deemed necessary and proper.

2  
3 DATED: September 14, 2017

*Kimberly Kirchmeyer*  
KIMBERLY KIRCHMEYER  
Executive Director  
Medical Board of California  
State of California  
Complainant

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Exhibit A:

Decision and Order for Case No. 04-2013-235019

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Thomas S. Powers, M.D.

Physician's & Surgeon's  
Certificate No. G 15640

Respondent.

MBC File # 04-2013-235019

ORDER CORRECTING NUNC PRO TUNC  
CONDITION 3 OF THE DECISION

On its own motion, the Medical Board of California (hereafter "Board") finds that there are clerical errors in the first and second paragraphs of Condition 3 of the Stipulated Settlement and Disciplinary Order in the above-entitled matter, and that such clerical errors should be corrected.

IT IS HEREBY ORDERED that the first and second paragraphs of Condition 3 of the Stipulated Settlement and Disciplinary Order be amended as follows:

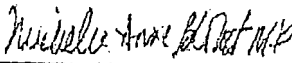
"CONTROLLED SUBSTANCES - ABSTAIN FROM USE: Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed or recommended to Respondent by another practitioner for a bona fide illness or condition."

"Within 15 calendar days of receiving any lawfully prescribed or recommended medications, Respondent shall notify the Board or its designee of the following: (1) the issuing practitioner's name, address, and telephone number; (2) medication name, strength, and quantity; and (3) issuing pharmacy name, address, and telephone number."

IT IS HEREBY FURTHER ORDERED that the Stipulated Settlement and Disciplinary Order, as amended herein, remains in effect as of July 14, 2017, and all the balance of the Decision remain operative and unaffected.

IT IS HEREBY FURTHER ORDERED that the Decision ordered on September 28, 2017, is nullified and shall have no effect.

October 13, 2017

  
Michelle Anne Bholat, M.D.  
Chair  
Panel B

AGO-0066

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation  
Against:

Thomas S. Powers, M.D.

Case No. 04-2013-235019

Physician's and Surgeon's  
Certificate No. G-15640

Respondent

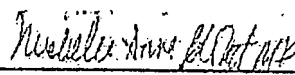
DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on July 14, 2017.

IT IS SO ORDERED: June 14, 2017.

MEDICAL BOARD OF CALIFORNIA

  
Michelle Anne Bholat, M.D., Chair  
Panel B

AGO-0067

1 XAVIER BECERRA  
Attorney General of California  
2 ALEXANDRA M. ALVAREZ  
Supervising Deputy Attorney General  
3 CHRISTINE A. RHEE  
Deputy Attorney General  
4 State Bar No. 295656  
600 West Broadway, Suite 1800  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 738-9455  
7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

9  
10 BEFORE THE  
11 MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
12 STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 04-2013-235019

14 THOMAS POWERS, M.D.  
2112 E. 4th Street, Ste. 100  
15 Santa Ana, CA 92705-3349

OAH No. 2016110016

16 Physician's and Surgeon's Certificate  
17 No. C15640,

STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER

18 Respondent.

19  
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
21 entitled proceedings that the following matters are true:

22 PARTIES

23 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board  
24 of California (Board). She brought this action solely in her official capacity and is represented in  
25 this matter by Xavier Becerra, Attorney General of the State of California, by Christine A. Rhee,  
26 Deputy Attorney General.

27 2. Respondent Thomas S. Powers, M.D. (Respondent) is represented in this proceeding  
28 by attorney John D. Martin, Esq., whose address is: 319 Harvard Avenue, Claremont, CA 91711.



1 3. On or about October 18, 1968, the Board issued Physician's and Surgeon's Certificate  
2 No. G15640 to Respondent. Physician's and Surgeon's Certificate No. G15640 was in full force  
3 and effect at all times relevant to the charges brought in Accusation No. 04-2013-235019, and  
4 will expire on August 31, 2017, unless renewed.

5 JURISDICTION

6 4. Accusation No. 04-2013-235019 was filed before the Board, and is currently pending  
7 against Respondent. The Accusation and all other statutorily required documents were properly  
8 served on Respondent on September 2, 2016. Respondent timely filed his Notice of Defense  
9 contesting the Accusation.

10 5. A copy of Accusation No. 04-2013-235019 is attached as Exhibit A and incorporated  
11 by reference as if fully set forth herein.

12 ADVISEMENT AND WAIVERS

13 6. Respondent has carefully read, fully discussed with counsel, and understands the  
14 charges and allegations in Accusation No. 04-2013-235019. Respondent has also carefully read,  
15 fully discussed with counsel, and understands the effects of this Stipulated Settlement and  
16 Disciplinary Order.

17 7. Respondent is fully aware of his legal rights in this matter, including the right to a  
18 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine  
19 the witnesses against him; the right to present evidence and to testify on his own behalf; the right  
20 to the issuance of subpoenas to compel the attendance of witnesses and the production of  
21 documents; the right to reconsideration and court review of an adverse decision; and all other  
22 rights accorded by the California Administrative Procedure Act and other applicable laws.

23 8. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently  
24 waives and gives up each and every right set forth above.

25 CULPABILITY

26 9. Respondent admits the truth of each and every charge and allegation in Accusation  
27 No. 04-2013-235019.

28 ///

1 10. Respondent agrees that his Physician's and Surgeon's Certificate No. Q15640 is  
2 subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth  
3 in the Disciplinary Order below.

4 CONTINGENCY

5 11. This Stipulated Settlement and Disciplinary Order shall be subject to approval of the  
6 Board. The parties agree that this Stipulated Settlement and Disciplinary Order shall be  
7 submitted to the Board for its consideration in the above-entitled matter and, further, that the  
8 Board shall have a reasonable period of time in which to consider and act on this Stipulated  
9 Settlement and Disciplinary Order after receiving it. By signing this stipulation, Respondent fully  
10 understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation  
11 prior to the time the Board considers and acts upon it.

12 12. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null  
13 and void and not binding upon the parties unless approved and adopted by the Board, except for  
14 this paragraph, which shall remain in full force and effect. Respondent fully understands and  
15 agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and  
16 Disciplinary Order, the Board may receive oral and written communications from its staff and/or  
17 the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify  
18 the Board, any member thereof, and/or any other person from future participation in this or any  
19 other matter affecting or involving Respondent. In the event that the Board does not, in its  
20 discretion, approve and adopt this Stipulated Settlement and Disciplinary Order, with the  
21 exception of this paragraph, it shall not become effective, shall be of no evidentiary value  
22 whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party  
23 hereto. Respondent further agrees that should this Stipulated Settlement and Disciplinary Order  
24 be rejected for any reason by the Board, Respondent will assert no claim that the Board, or any  
25 member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this  
26 Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

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1 ADDITIONAL PROVISIONS

2 13. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to  
3 be an integrated writing representing the complete, final and exclusive embodiment of the  
4 agreements of the parties in the above-entitled matter.

5 14. The parties understand and agree that Portable Document Format (PDF) and facsimile  
6 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile  
7 signatures thereto, shall have the same force and effect as the originals.

8 15. In consideration of the foregoing admissions and stipulations, the parties agree that  
9 the Board may, without further notice or formal proceeding, issue and enter the following  
10 Disciplinary Order:

11 DISCIPLINARY ORDER

12 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. Q15640 issued  
13 to Respondent Thomas S. Powers, M.D., is revoked. However, the revocation is stayed and  
14 Respondent is placed on probation for three (3) years on the following terms and conditions from  
15 the effective date of the Decision:

16 1. CONTROLLED SUBSTANCES - PARTIAL RESTRICTION. Respondent shall not  
17 order, prescribe, dispense, administer, furnish, or possess any Schedule II or Schedule III  
18 controlled substances as defined by the California Uniform Controlled Substances Act, except for  
19 the following: anabolic steroids pursuant to California Health and Safety Code Section 11056,  
20 subdivision (f). Respondent further agrees that he will only order, prescribe, dispense,  
21 administer, furnish, or possess Suboxone to treat patients for substance dependence or addiction  
22 only.

23 2. CONTROLLED SUBSTANCES - MAINTAIN RECORDS AND ACCESS TO  
24 RECORDS AND INVENTORIES. Respondent shall maintain a record of all controlled  
25 substances ordered, prescribed, dispensed, administered, or possessed by Respondent, and any  
26 recommendation or approval which enables a patient or patient's primary caregiver to possess or  
27 cultivate marijuana for the personal medical purposes of the patient within the meaning of Health  
28 and Safety Code section 11162.5, during probation, showing all the following: (1) the name and

1 address of patient; (2) the date; (3) the character and quantity of controlled substances involved;  
2 and (4) the indications and diagnosis for which the controlled substances were furnished.

3 Respondent shall keep these records in a separate file or ledger, in chronological order. All  
4 records and any inventories of controlled substances shall be available for immediate inspection  
5 and copying on the premises by the Board or its designee at all times during business hours and  
6 shall be retained for the entire term of probation.

7 3. CONTROLLED SUBSTANCES - ABSTAIN FROM USE. Respondent shall abstain  
8 completely from the personal use or possession of controlled substances as defined in the  
9 California Uniform Controlled Substances Act, dangerous drugs as defined by Business and  
10 Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not  
11 apply to medications lawfully prescribed to Respondent by another practitioner for a bona fide  
12 illness or condition.

13 Within 15 calendar days of receiving any lawfully prescribed medications, Respondent  
14 shall notify the Board or its designee of the following: (1) the issuing practitioner's name,  
15 address, and telephone number; (2) medication name, strength, and quantity; and (3) issuing  
16 pharmacy name, address, and telephone number.

17 If Respondent has a confirmed positive biological fluid test for any substance (whether or  
18 not legally prescribed) and has not reported the use to the Board or its designee, Respondent shall  
19 receive a notification from the Board or its designee to immediately cease the practice of  
20 medicine. Respondent shall not resume the practice of medicine until the final decision on an  
21 accusation and/or a petition to revoke probation is effective. An accusation and/or petition to  
22 revoke probation shall be filed by the Board within 30 days of the notification to cease practice.

23 If Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board  
24 shall provide Respondent with a hearing within 30 days of the request, unless the Respondent  
25 stipulates to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she  
26 shall forward a Proposed Decision to the Board within 15 days of submission of the matter.

27 Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the  
28 Board shall issue its Decision, unless good cause can be shown for the delay. If the case is heard

1 by the Board, the Board shall issue its decision within 15 days of submission of the case, unless  
2 good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption  
3 of the proposed decision, request for reconsideration, remands and other interlocutory orders  
4 issued by the Board. The cessation of practice shall not apply to the reduction of the probationary  
5 time period.

6 If the Board does not file an accusation or petition to revoke probation within 30 days of the  
7 issuance of the notification to cease practice or does not provide Respondent with a hearing  
8 within 30 days of a such a request, the notification of cease practice shall be dissolved.

9 4. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to  
10 biological fluid testing, at Respondent's expense, upon request of the Board or its designee.  
11 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair  
12 follicle testing, or similar drug screening approved by the Board or its designee. Prior to  
13 practicing medicine, Respondent shall contract with a laboratory or service approved in advance  
14 by the Board or its designee that will conduct random, unannounced, observed, biological fluid  
15 testing. The contract shall require results of the tests to be transmitted by the laboratory or  
16 service directly to the Board or its designee within four hours of the results becoming available.  
17 Respondent shall maintain this laboratory or service contract during the period of probation.

18 A certified copy of any laboratory test result may be received in evidence in any  
19 proceedings between the Board and Respondent.

20 If Respondent fails to cooperate in a random biological fluid testing program within the  
21 specified time frame, Respondent shall receive a notification from the Board or its designee to  
22 immediately cease the practice of medicine. Respondent shall not resume the practice of  
23 medicine until the final decision on an accusation and/or a petition to revoke probation is  
24 effective. An accusation and/or petition to revoke probation shall be filed by the Board within 30  
25 days of the notification to cease practice. If Respondent requests a hearing on the accusation  
26 and/or petition to revoke probation, the Board shall provide Respondent with a hearing within 30  
27 days of the request, unless Respondent stipulates to a later hearing. If the case is heard by an  
28 Administrative Law Judge alone, he or she shall forward a Proposed Decision to the Board within

1 15 days of submission of the matter. Within 15 days of receipt by the Board of the  
2 Administrative Law Judge's proposed decision, the Board shall issue its Decision, unless good  
3 cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its  
4 decision within 15 days of submission of the case, unless good cause can be shown for the delay.  
5 Good cause includes, but is not limited to, non-adoption of the proposed decision, request for  
6 reconsideration, remands and other interlocutory orders issued by the Board. The cessation of  
7 practice shall not apply to the reduction of the probationary time period.

8 If the Board does not file an accusation or petition to revoke probation within 30 days of the  
9 issuance of the notification to cease practice or does not provide Respondent with a hearing  
10 within 30 days of a such a request, the notification of cease practice shall be dissolved.

11 5. EDUCATION COURSE. Within 60 calendar days of the effective date of this  
12 Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee  
13 for its prior approval educational program(s) or course(s) which shall not be less than 40 hours  
14 per year, for each year of probation. The educational program(s) or course(s) shall be aimed at  
15 correcting any areas of deficient practice or knowledge and shall be Category I certified. The  
16 educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to  
17 the Continuing Medical Education (CME) requirements for renewal of licensure. Following the  
18 completion of each course, the Board or its designee may administer an examination to test  
19 Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65  
20 hours of CME of which 40 hours were in satisfaction of this condition.

21 6. PRESCRIBING PRACTICES COURSE. Within 60 calendar days of the effective  
22 date of this Decision, Respondent shall enroll in a course in prescribing practices approved in  
23 advance by the Board or its designee. Respondent shall provide the approved course provider  
24 with any information and documents that the approved course provider may deem pertinent.  
25 Respondent shall participate in and successfully complete the classroom component of the course  
26 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully  
27 complete any other component of the course within one (1) year of enrollment. The prescribing  
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1 practices course shall be at Respondent's expense and shall be in addition to the Continuing  
2 Medical Education (CME) requirements for renewal of licensure.

3 A prescribing practices course taken after the acts that gave rise to the charges in the  
4 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board  
5 or its designee, be accepted towards the fulfillment of this condition if the course would have  
6 been approved by the Board or its designee had the course been taken after the effective date of  
7 this Decision.

8 Respondent shall submit a certification of successful completion to the Board or its  
9 designee not later than 15 calendar days after successfully completing the course, or not later than  
10 15 calendar days after the effective date of the Decision, whichever is later.

11 7. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective  
12 date of this Decision, Respondent shall enroll in a course in medical record-keeping approved in  
13 advance by the Board or its designee. Respondent shall provide the approved course provider  
14 with any information and documents that the approved course provider may deem pertinent.  
15 Respondent shall participate in and successfully complete the classroom component of the course  
16 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully  
17 complete any other component of the course within one (1) year of enrollment. The medical  
18 record keeping course shall be at Respondent's expense and shall be in addition to the Continuing  
19 Medical Education (CME) requirements for renewal of licensure.

20 A medical record keeping course taken after the acts that gave rise to the charges in the  
21 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board  
22 or its designee, be accepted towards the fulfillment of this condition if the course would have  
23 been approved by the Board or its designee had the course been taken after the effective date of  
24 this Decision.

25 Respondent shall submit a certification of successful completion to the Board or its  
26 designee not later than 15 calendar days after successfully completing the course, or not later than  
27 15 calendar days after the effective date of the Decision, whichever is later.

28 ///

1           8. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of  
2 the effective date of this Decision, Respondent shall enroll in a professionalism program, that  
3 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1.  
4 Respondent shall participate in and successfully complete that program. Respondent shall  
5 provide any information and documents that the program may deem pertinent. Respondent shall  
6 successfully complete the classroom component of the program not later than six (6) months after  
7 Respondent's initial enrollment, and the longitudinal component of the program not later than the  
8 time specified by the program, but no later than one (1) year after attending the classroom  
9 component. The professionalism program shall be at Respondent's expense and shall be in  
10 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

11           A professionalism program taken after the acts that gave rise to the charges in the  
12 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board,  
13 or its designee, be accepted towards the fulfillment of this condition if the program would have  
14 been approved by the Board or its designee had the program been taken after the effective date of  
15 this Decision.

16           Respondent shall submit a certification of successful completion to the Board or its  
17 designee not later than 15 calendar days after successfully completing the program or not later  
18 than 15 calendar days after the effective date of the Decision, whichever is later.

19           9. CLINICAL COMPETENCE ASSESSMENT PROGRAM. Within 60 calendar days  
20 of the effective date of this Decision, Respondent shall enroll in a clinical competence assessment  
21 program approved in advance by the Board or its designee. Respondent shall successfully  
22 complete the Program not later than six (6) months after Respondent's initial enrollment unless  
23 the Board or its designee agrees in writing to an extension of that time.

24           The program shall consist of a comprehensive assessment of Respondent's physical and  
25 mental health and the six general domains of clinical competence as defined by the Accreditation  
26 Council on Graduate Medical Education and American Board of Medical Specialties pertaining to  
27 Respondent's current or intended area of practice. The program shall take into account data  
28 obtained from the pre-assessment, self-report forms and interview, and the Decision, Accusation,



1 and any other information that the Board or its designee deems relevant. The program shall  
2 require Respondent's on-site participation for a minimum of three (3) and no more than five (5)  
3 days as determined by the program for the assessment and clinical education evaluation.

4 Respondent shall pay all expenses associated with the clinical competence assessment program.

5 At the end of the evaluation, the program will submit a report to the Board or its designee  
6 which unequivocally states whether Respondent has demonstrated the ability to practice safely  
7 and independently. Based on Respondent's performance on the clinical competence assessment,  
8 the program will advise the Board or its designee of its recommendation(s) for the scope and  
9 length of any additional educational or clinical training, evaluation or treatment for any medical  
10 condition or psychological condition, or anything else affecting Respondent's practice of  
11 medicine. Respondent shall comply with the program's recommendations.

12 Determination as to whether Respondent successfully completed the clinical competence  
13 assessment program is solely within the program's jurisdiction.

14 If Respondent fails to enroll, participate in, or successfully complete the clinical  
15 competence assessment program within the designated time period, Respondent shall receive a  
16 notification from the Board or its designee to cease the practice of medicine within three (3)  
17 calendar days after being so notified. Respondent shall not resume the practice of medicine until  
18 enrollment or participation in the outstanding portions of the clinical competence assessment  
19 program have been completed. If Respondent did not successfully complete the clinical  
20 competence assessment program, Respondent shall not resume the practice of medicine until a  
21 final decision has been rendered on the accusation and/or a petition to revoke probation. The  
22 cessation of practice shall not apply to the reduction of the probationary time period.

23 10. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this  
24 Decision, Respondent shall submit to the Board or its designee for prior approval as a practice  
25 monitor, the name and qualifications of one or more licensed physicians and surgeons whose  
26 licenses are valid and in good standing, and who are preferably American Board of Medical  
27 Specialties (ABMS) certified. A monitor shall have no prior or current business or personal  
28 relationship with Respondent, or other relationship that could reasonably be expected to

1 compromise the ability of the monitor to render fair and unbiased reports to the Board, including  
2 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree  
3 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

4 The Board or its designee shall provide the approved monitor with copies of the Decision,  
5 Accusation, and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision,  
6 Accusation, and proposed monitoring plan, the monitor shall submit a signed statement that the  
7 monitor has read the Decision and Accusation, fully understands the role of a monitor, and agrees  
8 or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed  
9 monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for  
10 approval by the Board or its designee.

11 Within 60 calendar days of the effective date of this Decision, and continuing throughout  
12 probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall  
13 make all records available for immediate inspection and copying on the premises by the monitor  
14 at all times during business hours and shall retain the records for the entire term of probation.

15 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective  
16 date of this Decision, Respondent shall receive a notification from the Board or its designee to  
17 cease the practice of medicine within three (3) calendar days after being so notified. Respondent  
18 shall cease the practice of medicine until a monitor is approved to provide monitoring  
19 responsibility.

20 The monitor shall submit a quarterly written report to the Board or its designee which  
21 includes an evaluation of Respondent's performance, indicating whether Respondent's practices  
22 are within the standards of practice of medicine, and whether Respondent is practicing medicine  
23 safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the  
24 quarterly written reports to the Board or its designee within 10 calendar days after the end of the  
25 preceding quarter.

26 If the monitor resigns or is no longer available, Respondent shall, within five (5) calendar  
27 days of such resignation or unavailability, submit to the Board or its designee, for prior approval,  
28 the name and qualifications of a replacement monitor who will be assuming that responsibility

1 within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within  
2 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a  
3 notification from the Board or its designee to cease the practice of medicine within three (3)  
4 calendar days after being so notified. Respondent shall cease the practice of medicine until a  
5 replacement monitor is approved and assumes monitoring responsibility.

6 In lieu of a monitor, Respondent may participate in a professional enhancement program  
7 approved in advance by the Board or its designee, that includes, at minimum, quarterly chart  
8 review, semi-annual practice assessment, and semi-annual review of professional growth and  
9 education. Respondent shall participate in the professional enhancement program at  
10 Respondent's expense during the term of probation.

11 11. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the  
12 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the  
13 Chief Executive Officer at every hospital where privileges or membership are extended to  
14 Respondent, at any other facility where Respondent engages in the practice of medicine,  
15 including all physician and locum tenens registries or other similar agencies; and to the Chief  
16 Executive Officer at every insurance carrier which extends malpractice insurance coverage to  
17 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15  
18 calendar days.

19 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

20 12. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE  
21 NURSES. During probation, Respondent is prohibited from supervising physician assistants and  
22 advanced practice nurses.

23 13. OBEDY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules  
24 governing the practice of medicine in California and remain in full compliance with any court  
25 ordered criminal probation, payments, and other orders.

26 14. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations  
27 under penalty of perjury on forms provided by the Board, stating whether there has been  
28 compliance with all the conditions of probation.

1 Respondent shall submit quarterly declarations not later than 10 calendar days after the end  
2 of the preceding quarter.

3 15. GENERAL PROBATION REQUIREMENTS.

4 Compliance with Probation Unit

5 Respondent shall comply with the Board's probation unit and all terms and conditions of  
6 this Decision.

7 Address Changes

8 Respondent shall, at all times, keep the Board informed of Respondent's business and  
9 residence addresses, email address (if available), and telephone number. Changes of such  
10 addresses shall be immediately communicated in writing to the Board or its designee. Under no  
11 circumstances shall a post office box serve as an address of record, except as allowed by Business  
12 and Professions Code section 2021, subdivision (b).

13 Place of Practice

14 Respondent shall not engage in the practice of medicine in Respondent's or patient's place  
15 of residence, unless the patient resides in a skilled nursing facility or other similar licensed  
16 facility.

17 License Renewal

18 Respondent shall maintain a current and renewed California physician's and surgeon's  
19 license.

20 Travel or Residence Outside California

21 Respondent shall immediately inform the Board or its designee, in writing, of travel to any  
22 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 30  
23 calendar days.

24 In the event Respondent should leave the State of California to reside or to practice,  
25 Respondent shall notify the Board or its designee, in writing, 30 calendar days prior to the dates  
26 of departure and return.

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28 ///

1 16. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be  
2 available in person upon request for interviews either at Respondent's place of business or at the  
3 probation unit office, with or without prior notice throughout the term of probation.

4 17. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or  
5 its designee, in writing, within 15 calendar days of any periods of non-practice lasting more than  
6 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is  
7 defined as any period of time Respondent is not practicing medicine as defined in Business and  
8 Professions Code sections 2051 and 2052, for at least 40 hours in a calendar month in direct  
9 patient care, clinical activity or teaching, or other activity as approved by the Board. If  
10 Respondent resides in California and is considered to be in non-practice, Respondent shall  
11 comply with all terms and conditions of probation. All time spent in an intensive training  
12 program which has been approved by the Board or its designee shall not be considered non-  
13 practice and does not relieve Respondent from complying with all the terms and conditions of  
14 probation. Practicing medicine in another state of the United States or Federal jurisdiction while  
15 on probation with the medical licensing authority of that state or jurisdiction shall not be  
16 considered non-practice. A Board-ordered suspension of practice shall not be considered as a  
17 period of non-practice.

18 In the event Respondent's period of non-practice while on probation exceeds 18 calendar  
19 months, Respondent shall successfully complete the Federation of State Medical Board's Special  
20 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program  
21 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model  
22 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

23 Respondent's period of non-practice while on probation shall not exceed two (2) years.

24 Periods of non-practice will not apply to the reduction of the probationary term.

25 Periods of non-practice for a Respondent residing outside of California will relieve  
26 Respondent of the responsibility to comply with the probationary terms and conditions with the  
27 exception of this condition and the following terms and conditions of probation: Obey All Laws;

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1 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Controlled  
2 Substances; and Biological Fluid Testing.

3 18. COMPLETION OF PROBATION. Respondent shall comply with all financial  
4 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the  
5 completion of probation. Upon successful completion of probation, Respondent's certificate shall  
6 be fully restored.

7 19. VIOLATION OF PROBATION. Failure to fully comply with any term or condition  
8 of probation is a violation of probation. If Respondent violates probation in any respect, the  
9 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and  
10 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke  
11 Probation, or an Interim Suspension Order is filed against Respondent during probation, the  
12 Board shall have continuing jurisdiction until the matter is final, and the period of probation shall  
13 be extended until the matter is final.

14 20. LICENSE SURRENDER. Following the effective date of this Decision, if  
15 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy  
16 the terms and conditions of probation, Respondent may request to surrender his license. The  
17 Board reserves the right to evaluate Respondent's request and to exercise its discretion in  
18 determining whether or not to grant the request, or to take any other action deemed appropriate  
19 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent  
20 shall, within 15 calendar days, deliver Respondent's wallet and wall certificate to the Board or its  
21 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject  
22 to the terms and conditions of probation. If Respondent re-applies for a medical license, the  
23 application shall be treated as a petition for reinstatement of a revoked certificate.

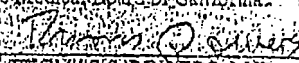
24 21. PROBATION MONITORING COSTS. Respondent shall pay the costs associated  
25 with probation monitoring each and every year of probation, as designated by the Board, which  
26 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of  
27 California and delivered to the Board or its designee no later than January 31 of each calendar  
28 year.

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ACCEPTANCE


I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, John D. Martin/Esq., understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. C 5340. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agreed to be bound by the Decision and Order of the Medical Board of California.

DATED: 4/3/17

  
THOMAS S. POWERS, M.D.  
Respondent

I have read and fully discussed with Respondent, Thomas S. Powers, M.D., the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 4/3/17

  
JOHN D. MARTIN, ESQ.  
Attorney for Respondent

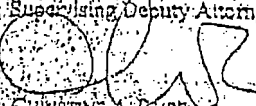
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated: 4/5/17

Respectfully submitted,

XAVIER BECERRA  
Attorney General of California  
ALEXANDRA M. ALVAREZ  
Succeeding Deputy Attorney General

  
CHRISTINE A. PEREZ  
Deputy Attorney General  
Attorney for Complainant

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Exhibit A.

Accusation No. 04-2013-235019

AGO-0084



FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO Sept 2 2016  
BY D. Richards ANALYST

KAMALA D. HARRIS  
Attorney General of California  
ALEXANDRA M. ALVAREZ  
Supervising Deputy Attorney General  
CHRISTINE A. RHEE  
Deputy Attorney General  
State Bar No. 295656  
600 West Broadway, Suite 1800  
San Diego, CA 92101  
P.O. Box 85266  
San Diego, CA 92186-5266  
Telephone: (619) 738-9455  
Facsimile: (619) 645-2061

*Attorneys for Complainant*

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 04-2013-235019

Thomas S. Powers, M.D.  
2001 East 4<sup>th</sup> Street, Suite 200  
Santa Ana, CA 92705

ACCUSATION

Physician's and Surgeon's Certificate  
No. G15640.

Respondent.

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about October 18, 1968, the Medical Board issued Physician's and Surgeon's Certificate No. G15640 to Thomas S. Powers, M.D. (Respondent). Physician's and Surgeon's Certificate No. G15640 was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2017, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code states:

"(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

"(1) Have his or her license revoked upon order of the board.

"(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

"(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

"(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

"(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

"(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1."

1 5. Section 2234 of the Code, states, in pertinent part:

2 "The board shall take action against any licensee who is charged with  
3 unprofessional conduct. In addition to other provisions of this article,  
4 unprofessional conduct includes, but is not limited to, the following:

5 "(a) Violating or attempting to violate, directly or indirectly, assisting in or  
6 abetting the violation of, or conspiring to violate any provision of this chapter.

7 "(b) Gross negligence.

8 "(c) Repeated negligent acts. To be repeated, there must be two or more  
9 negligent acts or omissions. An initial negligent act or omission followed by a  
10 separate and distinct departure from the applicable standard of care shall constitute  
11 repeated negligent acts.

12 "(1) An initial negligent diagnosis followed by an act or omission medically  
13 appropriate for that negligent diagnosis of the patient shall constitute a single  
14 negligent act.

15 "(2) When the standard of care requires a change in the diagnosis, act, or  
16 omission that constitutes the negligent act described in paragraph (1), including, but  
17 not limited to, a reevaluation of the diagnosis or a change in treatment, and the  
18 licensee's conduct departs from the applicable standard of care, each departure  
19 constitutes a separate and distinct breach of the standard of care.

20 "..."

21 6. Unprofessional conduct under section 2234 of the Code is conduct which breaches  
22 the rules or ethical code of the medical profession, or conduct which is unbecoming a member in  
23 good standing of the medical profession, and which demonstrates an unfitness to practice  
24 medicine. (*Shea v. Bd. of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

25 7. Section 2238 of the Code states:

26 "A violation of any federal statute or federal regulation or any of the statutes  
27 or regulations of this state regulating dangerous drugs or controlled substances  
28 constitutes unprofessional conduct."

1 8. Section 2239 of the Code states, in pertinent part:

2 "(a) The use or prescribing for or administering to himself or herself, of any  
3 controlled substance; or the use of any of the dangerous drugs specified in Section  
4 4022, or of alcoholic beverages, to the extent, or in such a manner as to be  
5 dangerous or injurious to the licensee, or to any other person or to the public; or to  
6 the extent that such use impairs the ability of the licensee to practice medicine  
7 safely or more than one misdemeanor or any felony involving the use,  
8 consumption, or self-administration of any of the substances referred to in this  
9 section, or any combination thereof, constitutes unprofessional conduct...

10 "..."

11 9. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain  
12 adequate and accurate records relating to the provision of services to their patients constitutes  
13 unprofessional conduct."

14 10. Section 11170 of the Health and Safety Code states: "No person shall prescribe,  
15 administer, or furnish a controlled substance for himself."

16 11. Section 4021 of the Code states: "'Controlled Substance' means any substance listed  
17 in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

18 12. Section 4022 of the Code states, in pertinent part:

19 "'Dangerous drug' or 'dangerous device' means any drug or device unsafe  
20 for self-use in humans or animals, and includes the following:

21 "(a) Any drug that bears the legend: 'Caution: federal law prohibits  
22 dispensing without prescription,' 'Rx only,' or words of similar import.

23 "..."

24 FIRST CAUSE FOR DISCIPLINE

25 (Gross Negligence)

26 13. Respondent has subjected his Physician's and Surgeon's Certificate No. 015640 to  
27 disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of  
28 ///

the Code, in that he committed gross negligence in his care and treatment of patients N.D., T.C., D.C., and M.W., as more particularly alleged hereinafter:

Patient N.D.

14. Sometime between December 2011, through December 2013, Respondent began treating patient N.D. Over the years, Respondent prescribed patient N.D. various narcotic medications for unknown medical ailments, including but not limited to, varying amounts of Hydrocodone Bitartrate Acetaminophen,<sup>1</sup> Hydromorphone,<sup>2</sup> Alprazolam,<sup>3</sup> Dilaudid, and Promethazine HCL Codeine Phosphate.<sup>4</sup>

15. Between on or about December 21, 2011, through on or about December 10, 2013, Respondent prescribed patient N.D. approximately 10 prescriptions of Alprazolam 2 mg, for a total of 910 tablets.

16. Between on or about December 21, 2011, through on or about December 10, 2013, Respondent prescribed patient N.D. approximately 14 prescriptions for Hydrocodone Bitartrate Acetaminophen 325 mg-10 mg, for a total of 1,550 tablets.

17. Between on or about December 21, 2011, through on or about December 10, 2013, Respondent prescribed patient N.D. approximately 7 prescriptions for Hydromorphone 4 mg, for a total of 940 tablets.

///

<sup>1</sup> Hydrocodone Bitartrate Acetaminophen, brand name Norco, contains acetaminophen and hydrocodone bitartrate, and is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code section 4022. Hydrocodone Bitartrate Acetaminophen 325 mg-10 mg contains 10 mg of hydrocodone and 325 mg of acetaminophen.

<sup>2</sup> Hydromorphone, brand name Dilaudid, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code section 4022.

<sup>3</sup> Alprazolam, brand name Xanax, is a benzodiazepine and is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022.

<sup>4</sup> Promethazine HCL Codeine Phosphate, contains codeine and is a Schedule V controlled substance pursuant to Health and Safety Code section 11058, subdivision (c), and a dangerous drug pursuant to Business and Professions Code section 4022.

1 18. Between on or about December 21, 2011, through on or about December 10, 2013,  
2 Respondent prescribed patient N.D. approximately 10 prescriptions for Dilaudid 4 mg. for a total  
3 of 1,360 tablets.

4 19. Between on or about December 21, 2011, through on or about December 10, 2013,  
5 Respondent prescribed patient N.D. approximately 3 prescriptions for Promethazine HCL  
6 Codeine Phosphate 6.25 mg.

7 20. Respondent was unable to provide any medical records<sup>5</sup> for patient N.D. and was  
8 unable to recollect patient N.D.'s treatment and care, including whether any history or physical  
9 exam was taken, any diagnoses, any medical indications, any prescriptions prescribed, any pain  
10 assessments that were conducted, any objectives for treatment, any review of patient N.D.'s  
11 CURES,<sup>6</sup> or any other risk assessment tools that may have determined the risk of potential  
12 substance-abusing behaviors by patient N.D.

13 21. Respondent committed gross negligence in his care and treatment of patient N.D.  
14 which included, but was not limited to, the following:

15 a. Paragraphs 14 through 20, above, are hereby incorporated by reference as if fully  
16 set forth herein; and

17 b. Respondent failed to maintain adequate and accurate medical records for patient  
18 N.D., including documentation for the following: a history and physical exam; a treatment  
19 plan and management goals; informed consent regarding the risks and benefits of using  
20 controlled substances; and ongoing monitoring while prescribing controlled substances.

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22 ///

23  
24 <sup>5</sup> After Complainant's requests for medical records for patients N.D., T.C., D.C., and M.W.,  
25 Respondent informed Complainant in or about August 2015 that Respondent lost all of his patients'  
26 records in a landlord-tenant dispute at his practice located in Huntington Beach, California. Respondent  
subsequently provided a certification of no records for patients N.D., T.C., D.C., and M.W. on or about  
March 29, 2016.

27 <sup>6</sup> The Controlled Substance Utilization Review and Evaluation System (CURES), is a database of  
28 Schedule II, III and IV controlled substances prescriptions dispensed in California serving the public health,  
regulatory oversight agencies, and law enforcement.

Patient T.C.

22. Sometime between 2011 and 2014, Respondent began treating patient T.C. Over the years, Respondent prescribed patient T.C. various narcotic medications for back pain and insomnia, including but not limited to Hydromorphone, Ketamine,<sup>7</sup> Oxycodone,<sup>8</sup> and Hydrocodone Bitartrate Acetaminophen.

23. Between on or about October 13, 2011, and on or about October 10, 2014, Respondent prescribed patient T.C. approximately 2 prescriptions for Hydromorphone 3 mg, for a total of 240 tablets.

24. Between on or about October 13, 2011, and on or about October 10, 2014, Respondent prescribed patient T.C. approximately 2 prescriptions for Hydromorphone 4 mg, for a total of 240 tablets.

25. Between on or about October 13, 2011, and on or about October 10, 2014, Respondent prescribed patient T.C. approximately 28 prescriptions for Oxycodone 30 mg, for a total of 3,980 tablets.

26. Between on or about October 13, 2011, and on or about October 10, 2014, Respondent prescribed patient T.C. approximately 2 prescriptions for Oxycodone 15 mg, for a total of 200 tablets.

27. Between on or about October 13, 2011, and on or about October 10, 2014, Respondent prescribed patient T.C. approximately 1 prescription for Ketamine.

28. Between on or about October 13, 2011, and on or about October 10, 2014, Respondent prescribed patient T.C. approximately 4 prescriptions for Hydrocodone Bitartrate Acetaminophen 325 mg-10 mg, for a total of 330 tablets.

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<sup>7</sup> Ketamine HCL, brand name Ketalar, is a Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022.

<sup>8</sup> Oxycodone HCL, brand name Oxycontin, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code section 4022.

1           29. Respondent was only able to produce one page of medical records documenting one  
2 office visit dated October 10, 2014, for patient T.C., in which Respondent prescribed patient T.C.  
3 Dilaudid 8 mg, quantity 120 tablets qid<sup>9</sup> for back pain and insomnia. Respondent was able to  
4 recall that during his treatment and care of patient T.C., patient T.C. once reported that his brother  
5 stole his prescription medication. Respondent was otherwise unable to recollect other aspects of  
6 patient T.C.'s treatment and care, including any history or physical exam taken, any medical  
7 indications for prescribing Ketamine, any other prescriptions prescribed, any pain assessments  
8 undertaken, any objectives for treatment made, any review of patient T.C.'s CURES, or any other  
9 risk assessment tools that may have determined the risk of substance-abusing behaviors by patient  
10 T.C.

11           30. Respondent committed gross negligence in his care and treatment of patient T.C.  
12 which included, but was not limited to, the following:

13           a. Paragraphs 22 through 29, above, are hereby incorporated by reference as if fully  
14 set forth herein; and

15           b. Respondent failed to maintain adequate and accurate medical records for patient  
16 T.C., including documentation for the following: a history and physical exam; treatment  
17 plan and management goals; informed consent regarding the risks and benefits of using  
18 controlled substances; and ongoing monitoring.

19           Patient D.C.

20           31. Sometime between 2011 through 2014, Respondent began treating patient D.C. Over  
21 the years, Respondent prescribed patient D.C. various narcotic medications for unknown medical  
22 ailments, including but not limited to, Oxycodone, Carisoprodol,<sup>10</sup> Hydrocodone Bitartrate  
23 Acetaminophen, and Promethazine HCL Codeine Phosphate.

24           32. Between on or about November 9, 2012, through on or about November 27, 2013,  
25 Respondent prescribed patient D.C. approximately 13 prescriptions for Oxycodone HCL 30 mg.

26           <sup>9</sup> "Qid" stands for "quater in die" which is Latin for four times a day.

27           <sup>10</sup> Carisoprodol, brand name Soma, is a Schedule IV controlled substance pursuant to 21 C.F.R. §  
28 1308, and is a dangerous drug pursuant to Business and Professions Code section 4022.



1 for a total of 1,670 tablets.

2 33. Between on or about November 9, 2012, through on or about November 27, 2013,  
3 Respondent prescribed patient D.C. approximately 8 prescriptions of Carisoprodol 350 mg. for a  
4 total of 720 tablets.

5 34. Between on or about November 9, 2012, through on or about November 27, 2013,  
6 Respondent prescribed patient D.C. approximately 8 prescriptions for Hydrocodone Bitartrate  
7 Acetaminophen 325 mg-10 mg, for a total of 730 tablets.

8 35. Between on or about November 9, 2012, through on or about November 27, 2013,  
9 Respondent prescribed patient D.C. approximately 3 prescriptions of Promethazine HCL Codeine  
10 Phosphate 6.25 mg.

11 36. Respondent was unable to provide any medical records for patient D.C. and was  
12 unable to recollect patient D.C.'s treatment and care, including any history or physical exam  
13 taken, any diagnoses, any medical indications, any prescriptions prescribed, any pain assessments  
14 undertaken, any objectives for treatment made, any review of patient D.C.'s CURES, or any other  
15 risk assessment tools that may have determined the risk of substance-abusing behaviors by patient  
16 D.C.

17 37. Respondent committed gross negligence in his care and treatment of patient D.C.,  
18 which included, but was not limited to, the following:

19 a. Paragraphs 31 through 36 above, are hereby incorporated by reference as if fully  
20 set forth herein; and

21 b. Respondent failed to maintain adequate and accurate medical records for patient  
22 D.C., including documentation for the following: a history and physical exam; treatment  
23 plan and management goals; informed consent regarding the risks and benefits of using  
24 controlled substances; and ongoing monitoring.

25 Patient M.W.

26 38. Sometime between 2012 through 2013, Respondent began treating patient M.W.  
27 According to patient M.W.'s autopsy report, Respondent treated patient M.W. for degenerative  
28 disc disease in the neck and back, radiating pain, and herniated discs. Respondent prescribed

1 patient M.W. narcotic medications, including but not limited to, Oxycodone and Hydrocodone,  
2 Bitartrate Acetaminophen.

3 39. Between on or about March 20, 2012, through on or about February 20, 2013,  
4 Respondent prescribed patient M.W. approximately 11 prescriptions of Oxycodone 30 mg, for a  
5 total of 1,420 tablets.

6 40. Between on or about March 20, 2012, through on or about February 20, 2013,  
7 Respondent prescribed patient M.W. approximately 2 prescriptions of Hydrocodone Bitartrate  
8 Acetaminophen 750 mg-7.5 mg,<sup>11</sup> for a total of 180 tablets.

9 41. Respondent was unable to provide any medical records for patient M.W. and was  
10 unable to recollect patient M.W.'s treatment and care, including any history or physical exam  
11 taken, any diagnoses, any medical indications, any prescriptions prescribed, any pain assessments  
12 undertaken, any objectives for treatment made, any review of patient M.W.'s CURES, or any  
13 other risk assessment tools that may have determined the risk of substance-abusing behaviors by  
14 patient M.W.

15 42. Respondent committed gross negligence in his care and treatment of patient M.W.,  
16 which included, but was not limited to, the following:

17 a. Paragraphs 38 through 41, above, are hereby incorporated by reference as if fully  
18 set forth herein; and

19 b. Respondent failed to maintain adequate and accurate medical records for patient  
20 M.W., including documentation for the following: a history and physical exam; treatment  
21 plan and management goals; informed consent regarding the risks and benefits of using  
22 controlled substances; and ongoing monitoring.

23 SECOND CAUSE FOR DISCIPLINE

24 (Repeated Negligent Acts)

25 43. Respondent has further subjected his Physician's and Surgeon's Certificate No.  
26 G15640 to disciplinary action under sections 2227 and 2234, as defined by section 2234,

27 <sup>11</sup> Hydrocodone Bitartrate Acetaminophen 750 mg-7.5 mg contains 7.5 mg of hydrocodone and  
28 750 mg of acetaminophen.

subdivision (c), of the Code, in that he committed repeated negligent acts in his care and treatment of patients N.D., T.C., D.C., and M.W., as more particularly alleged in paragraphs 14 through 42, above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

### THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

44. Respondent has further subjected his Physician's and Surgeon's Certificate No. G15640 to disciplinary action under sections 2227 and 2234, as defined by section 2266, of the Code, in that he failed to maintain adequate and accurate medical records in his care and treatment of patients N.D., T.C., D.C., and M.W. as more particularly alleged in paragraphs 14 through 43, above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

### FOURTH CAUSE FOR DISCIPLINE

(Self Prescribing of a Controlled Substance)

45. Respondent has further subjected his Physician's and Surgeon's Certificate No. G15640 to disciplinary action under sections 2227 and 2234, as defined by section 2239, subdivision (a), of the Code, in that he has prescribed controlled substances, to wit: Suboxone<sup>12</sup> and Carisoprodol, to himself.

### FIFTH CAUSE FOR DISCIPLINE

(Violation of State Laws Regulating Controlled Substances)

46. Respondent has further subjected his Physician's and Surgeon's Certificate No. G15640 to disciplinary action under sections 2227 and 2234, as defined by section 2238 of the Code, in that he has violated state laws regulating controlled substances and dangerous drugs, to wit: section 2239, subdivision (a), and Health and Safety Code section 11170, as more

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<sup>12</sup> Suboxone, a combination of buprenorphine and naloxone, is a Schedule V controlled substance pursuant to California Health and Safety Code 11053, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022.

1 particularly alleged in paragraph 45, above, which is hereby incorporated by reference and re-  
2 alleged as if fully set forth herein.

3 SIXTH CAUSE FOR DISCIPLINE

4 (General Unprofessional Conduct)

5 47. Respondent has further subjected his Physician's and Surgeon's Certificate No.  
6 C13640 to disciplinary action under sections 2227 and 2234 of the Code, in that he has engaged  
7 in conduct which breaches the rules or ethical code of the medical profession, or conduct which is  
8 unbecoming to a member in good standing of the medical profession, and which demonstrates an  
9 unfitness to practice medicine, as more particularly alleged in paragraphs 14 through 46, above,  
10 which are hereby incorporated by reference and re-alleged as if fully set forth herein.

11 PRAYER :

12 WHEREFORE, complainant requests that a hearing be held on the matters herein alleged,  
13 and that following the hearing, the Medical Board of California issue a decision:


14 1. Revoking or suspending Physician's and Surgeon's Certificate No. C13640, issued to  
15 Respondent Thomas S. Powers, M.D.;

16 2. Revoking, suspending or denying approval of Respondent Thomas S. Powers, M.D.'s  
17 authority to supervise physician assistants, pursuant to section 3327 of the Code;

18 3. Ordering Respondent Thomas S. Powers, M.D., if placed on probation, to pay the  
19 Board the costs of probation monitoring; and

20 4. Taking such other and further action as deemed necessary and proper.

21  
22 DATED: September 2, 2015

  
KIMBERLY KIRCHMEYER  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
Complainant

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